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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS

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CHAPTER 7 INTERIM TRUSTEE,

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Plaintiff,

Adv. Proc. No.

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v.

22-01141-dsj

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PEREVOSKI, ET AL.,

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Defendants.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS

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CHAPTER 7 INTERIM TRUSTEE,

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Plaintiff,

Adv. Proc. No.

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v.

22-01146-dsj

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KOSSOFF,

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Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS

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CHAPTER 7 INTERIM TRUSTEE,

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Plaintiff,

Adv. Proc. No.

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v.

23-01023-dsj

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COLGATE UNIVERSITY, ET AL.,

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Defendants.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01062-dsj  
AMERICAN EXPRESS COMPANY,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01066-dsj  
WOART,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01069-dsj  
ROSENBLATT,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01071-dsj  
46/47 APARTMENT HOLDINGS LLC,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01073-dsj  
161 WEST 4 REALTY LLC,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01074-dsj  
169 WEST 22 STREET, INC.,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01075-dsj  
333 EAST 46TH STREET APARTMENT CORP.,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01076-dsj  
BANYAN TREE CAPITAL LLC,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01077-dsj  
145 HENRY PARTNERS, LLC,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01079-dsj  
PENNA,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01080-dsj  
BARASKY,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01081-dsj  
JELIC,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01083-dsj  
CURANOVIC, ET AL.,  
Defendants.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01086-dsj  
SHAMAH,  
Defendant.

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ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
CHAPTER 7 INTERIM TRUSTEE,  
Plaintiff, Adv. Proc. No.  
v. 23-01092-dsj  
ALEXANDER, ET AL.,  
Defendants.

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3 ALBERT TOGUT, NOT INDIVIDUALLY, BUT SOLELY IN HIS CAPACITY AS  
4 CHAPTER 7 INTERIM TRUSTEE,  
5 Plaintiff, Adv. Proc. No.  
6 v. 23-01094-dsj  
7 BLOOMINGDALE'S INC., ET AL.,  
8 Defendants.

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12 United States Bankruptcy Court  
13 One Bowling Green  
14 New York, New York

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16 May 23, 2023  
17 10:00 AM  
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21 B E F O R E :  
22 HON. DAVID S. JONES  
23 U.S. BANKRUPTCY JUDGE  
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Adversary proceeding: 22-01113-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. VNB New York LLC, et al.

1) Scheduling conference

Adversary proceeding: 22-01158-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Roc-Le Triomphe Associates, LLC, et al.

1) Pre-trial and case conference

Adversary proceeding: 22-01141-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Perevoski, et al.

1) Pre-trial conference

Adversary proceeding: 22-01146-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Kossoff

1) Pre-trial conference

Adversary proceeding: 23-01023-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Colgate University, et al.

1) Pre-trial conference

Adversary proceeding: 23-01062-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. American Express Company

1) Pre-trial conference

Adversary proceeding: 23-01066-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Woart

1) Pre-trial conference

Adversary proceeding: 23-01069-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Rosenblatt

1) Pre-trial conference

Adversary proceeding: 23-01071-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. 46/47 Apartment Holdings LLC

1) Pre-trial conference

Adversary proceeding: 23-01073-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. 161 West 4 Realty LLC

1) Pre-trial conference

Adversary proceeding: 23-01074-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. 169 West 22 Street, Inc.

1) Pre-trial conference

Adversary proceeding: 23-01075-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. 333 East 46th Street Apartment Corp.

1) Pre-trial conference

Adversary proceeding: 23-01076-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Banyan Tree Capital LLC

1) Pre-trial conference

Adversary proceeding: 23-01077-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. 145 Henry Partners, LLC

1) Pre-trial conference

Adversary proceeding: 23-01079-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Penna

1) Pre-trial conference

Adversary proceeding: 23-01080-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Barasky

1) Pre-trial conference

Adversary proceeding: 23-01081-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Jelic

1) Pre-trial conference

Adversary proceeding: 23-01083-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Curanovic, et al.,

1) Pre-trial conference

Adversary proceeding: 23-01086-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Shamah, et al.,

1) Pre-trial conference

Adversary proceeding: 23-01092-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Alexander, et al.,

1) Pre-trial conference

Adversary proceeding: 23-01094-dsj, Albert Togut, not  
individually, but solely in his capacity as Chapter 7 interim  
trustee v. Bloomingdale's Inc., et al.,  
1) Pre-trial conference  
2) Status conference  
3) Status conference re: order signed on 4/17/2023 compelling  
Imperial Business Solutions, LLC to comply with Bankruptcy Rule  
2004 order and subpoena  
4) Status conference re: order signed on 4/17/2023 compelling  
Biz Advance Now, Inc. to comply with Bankruptcy Rule 2004 order  
and subpoena  
5) Status conference re: order signed on 4/17/2023 compelling  
Ace Funding Source LLC to comply with Bankruptcy Rule 2004  
order and subpoena

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**KOSSOFF PLLC**

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P R O C E E D I N G S

THE COURT: Good morning, everyone. It's Judge Jones. We're here for a 10 a.m. calendar in mostly adversary proceedings and a couple of things in the main case arising out of the Kossoff PLLC bankruptcy, number 21-10699.

Hello to all of you. We have your appearances through the sign-in process, I think, so I don't need to take appearances. And I'm open to efficiency suggestions, but my thought coming in is, we have Mr. Kossoff on the line, and I think -- my thought was, let's go through with the matters in which he has an interest first, so that we can accomplish that, and the institution can free up its support of that, if it needs and wants, and then we can move through the remainder.

Ms. Nester, are you leading us today? You're muted.

MS. NESTER: Your Honor, Minta Nester, Togut, Segal & Segal, counsel for the Chapter 7 trustee. My colleague Jared Borriello will be handling certain of the adversary proceedings, as will I. And then Ron Howard will be tackling the few other matters.

THE COURT: Okay.

MS. NESTER: So I think that makes sense. We can do that approach.

THE COURT: Okay. So I think -- I want to make sure I cover the matters that Mr. Kossoff has, meaning Mitchell Kossoff, has played a role in, and I think that is the -- oh,

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1 I'm looking at a calendar printout that cuts off defendants'  
2 names. But I think that's going to include the VNB matter,  
3 the Roc -- I'm wrong. I'm just not reading it properly.

4 So I think that's going to include the matters in  
5 which the defendants are VNB New York LLC, Roc-Le Triomphe  
6 Associates, maybe Perevoski, and Kossoff, numbers 22-1113,  
7 1158, 1141, and 1146. Do I have that right?

8 MR. BORRIELLO: Your Honor, it's Jared Borriello from  
9 Togut, on behalf of the defendant, Kossoff PLLC.

10 I think so. VNB, which is 1113, is correct. Mr.  
11 Kossoff is not a defendant in 1141 or 1146. I think --

12 THE COURT: Okay. So maybe we can just -- and how  
13 about Roc-Le Triomphe, 1158?

14 MR. BORRIELLO: Yes, he is. He's also a defendant.  
15 So we can cover those.

16 THE COURT: So let's just do those two, right?

17 MR. BORRIELLO: Yep, that's fine. I'm handling the  
18 Valley National Bank, VNB matter. So we can start there, and  
19 then I'll pass it to Ms. Nester, who will be handling the Roc-  
20 Le Triomphe.

21 THE COURT: Okay. Great. Let me, before you get  
22 going, just ask, Mr. Kossoff, are you with us and able to hear  
23 okay? And if you can also say hello and make sure you're good  
24 with this procedure.

25 MR. KOSSOFF: Yes. I have no problem with it, Your

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22

1 Honor, and salutations of the day.

2 THE COURT: Great. Thank you very much. When you do  
3 speak, just try to speak a little loudly. I could hear you  
4 okay, but your volume was not robust. But we're good. Okay.  
5 So let's --

6 MR. KOSSOFF: Okay.

7 THE COURT: Yeah. Thanks very much.

8 So let's turn to VNB, please. Go ahead, Mr.  
9 Borriello.

10 MR. BORRIELLO: Okay. Good morning, Your Honor.  
11 Again, Jared Borriello for the Chapter 7 trustee.

12 Since the last time we were before Your Honor, Valley  
13 Bank -- VNB and Valley Bank and the trustee have continued to  
14 engage in discussions involving both our financial advisors and  
15 the exchange of additional information.

16 Unfortunately, to date, those discussions have not  
17 been successful. Similarly, with counsel for the estate of  
18 Phyllis Kossoff, we continue to exchange information, but we  
19 have not been able to reach a resolution.

20 So today we're proposing that we submit a scheduling  
21 order to Your Honor so we can start to move that case forward.  
22 We've previously circulated the order to both Valley Bank's  
23 counsel and the estate of Phyllis Kossoff's counsel, and  
24 they've signed off. At least that's my understanding. They  
25 could tell you differently if that's the case.

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1 I have not sent it to Mr. Kossoff yet. The other  
2 parties just signed off today. But I'm happy to send him the  
3 text of that order, given the limitations we have with the --

4 THE COURT: Yeah.

5 MR. BORRIELLO: -- in an email so he can --

6 THE COURT: Well, let me -- I got it. Let me just --  
7 sorry to cut you off. But let me just ask you to describe --  
8 I'm picturing a fairly standard scheduling order that's going  
9 to set a series of deadlines. So do you want to just --

10 MR. BORRIELLO: Sure.

11 THE COURT: Do you want to please describe what those  
12 are?

13 MR. BORRIELLO: So we worked off of Your Honor's  
14 standard, I think, form from the court portal. We set initial  
15 disclosures on June 22nd, the close of all fact discovery -- or  
16 fact discovery for October 15th. And then the close of all  
17 discovery, including any expert discovery, for December 15th.

18 THE COURT: Okay. Do you know yet if this is going to  
19 involve expert discovery?

20 MR. BORRIELLO: For at least insolvency purposes, we  
21 anticipate --

22 THE COURT: Oh, right.

23 MR. BORRIELLO: -- that the trustee will have an  
24 expert. And parties may also, if they're challenging our  
25 insolvency determination, they'll likely have experts as well.

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1 THE COURT: Okay. And are those dates contemplated to  
2 apply to Mr. Kossoff in his role as defendant as well?

3 MR. BORRIELLO: We are --

4 THE COURT: In your view.

5 MR. BORRIELLO: Yeah, we've contemplated them applying  
6 to all defendants. That's one of the reasons we built in a  
7 good lead time for even initial disclosures.

8 THE COURT: Right.

9 MR. BORRIELLO: We thought that would be able to  
10 accommodate his schedule.

11 THE COURT: Okay. So let me say a couple of things,  
12 and then I'll ask Mr. Kossoff about this.

13 So first, thank you for undertaking this. I think  
14 I've previously said, either in this or other cases, I'm good  
15 leaving people a reasonable amount of time to try to reach a  
16 consensual resolution. But if not, it needs to get on a  
17 discovery track, or else this process will drag on forever. So  
18 you're implementing that right about in line with what I was  
19 hoping to see.

20 As a general matter, I have a very broad brush, sort  
21 of, sparse form order on the website, which is fine with me.  
22 If people think it would be productive, I'm always open to  
23 inserting more granular deadlines. You can impose deadlines  
24 for service of written document requests and interrogatories,  
25 and then for responses, and so forth, like, whatever degree of



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1 particularity you want, I'm open to, so don't think that's  
2 something I don't like. I just didn't impose it universally.  
3 Okay?

4 MR. BORRIELLO: Okay.

5 THE COURT: So keep that in mind. That said, I'm fine  
6 with you using the sequence you described.

7 And let me turn to Mr. Kossoff. This may be the first  
8 you're hearing about this, but are you able to say whether  
9 you're okay with the deadlines that Mr. Borriello described,  
10 Mr. Kossoff?

11 MR. KOSSOFF: Generally, I am. I just have one or two  
12 specific thoughts.

13 THE COURT: Okay. So why don't you let me know what  
14 your specific thoughts are? That's fine.

15 MR. KOSSOFF: First of all, I want to thank you for  
16 your decision on my motion for reargument. And I assume the  
17 July 12th conference is canceled.

18 THE COURT: Wait. You said -- I'm sorry. You said  
19 5/12, which is in the past.

20 MR. KOSSOFF: No, July 12th.

21 THE COURT: Oh, I misheard you.

22 MR. KOSSOFF: July 12th.

23 THE COURT: Sorry. I don't know the answer off the  
24 top of my head. Let me see if we -- I don't know. I don't  
25 know the answer. I have a lot of conferences on -- I just

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1 looked at my calendar for July 12th.

2 MR. KOSSOFF: It was set down in a separate --

3 THE COURT: But let --

4 MR. KOSSOFF: It was set down in a separate order for  
5 Your Honor on scheduling of briefings of the reargument motion  
6 and then a hearing on July 12th.

7 THE COURT: Oh, if it was a hearing specific to that  
8 motion, yeah, that won't go forward, because I've decided it.

9 MR. KOSSOFF: Okay. All right. Also, Your Honor,  
10 according to your suggestion, I sent out a letter to both  
11 counsel for VNB and the trustee, on March 31st, asking for  
12 certain documentation. And I was given repeated assurances  
13 that I would get that documentation. But unfortunately, I have  
14 not received it.

15 THE COURT: Okay.

16 MR. KOSSOFF: I'm wondering --

17 THE COURT: Yeah, so let's do this. I mean, really,  
18 I'm interested in setting schedules at this point. Since  
19 everyone's together, I guess I can ask trustee counsel and then  
20 VNB counsel where things stand on that, are they willing --  
21 well, first, let me ask Mr. Kossoff, did your letter ask for  
22 everything that you anticipate wanting by way of document  
23 discovery in the case anyway?

24 MR. KOSSOFF: No. There's a second letter that I'm  
25 probably going to be sending out with -- I wanted a copy of the

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1 IRS claim filing online, since I can't access it online.

2 THE COURT: Um-hum.

3 MR. KOSSOFF: And as well as some billing summaries.

4 But yes, so there are two other additional items.

5 THE COURT: Okay. So what I'll --

6 MR. KOSSOFF: It's --

7 THE COURT: Yeah, hang on, Mr. Kossoff. So look,  
8 you're going to be in touch -- this discovery schedule that's  
9 being imposed is going to include time for formal written  
10 discovery requests. I am all for cooperation and people  
11 getting you whatever you're entitled to informally as well.  
12 But with a backup, you can make formal written discovery  
13 requests under the civil rules, and those are obliged to be  
14 replied to.

15 But let me just hear quickly from --

16 MR. KOSSOFF: Let me just speak to that.

17 THE COURT: Oh, you've got one more thing? Go ahead.

18 MR. KOSSOFF: Let me just speak to that. Will I be  
19 able to, given my circumstances, just make these document  
20 requests by letter?

21 THE COURT: So you worded that as a question, but I'm  
22 going to interpret that as a request that everyone accept  
23 letter --

24 MR. KOSSOFF: Yes.

25 THE COURT: -- form document requests as more

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1     achievable for you. Is that right?

2             MR. KOSSOFF: Yes.

3             THE COURT: Okay. So let me hear from -- I'll start  
4     with the trustee about that. So here are the questions for  
5     you, Mr. Borriello. One is -- well, we'll start with the last  
6     thing. Will you accept letter requests from Mr. Kossoff in  
7     lieu of more formal written discovery requests?

8             The one thing I would say is, Mr. Kossoff, though, you  
9     should be comprehensive. You shouldn't hit the trustee with,  
10    like, a series of letter requests.

11            MR. KOSSOFF: I understand.

12            THE COURT: So it has to be administrable. But  
13    subject to that, would that be workable for the trustee? And  
14    then the other is what's the status on any prior request for  
15    information?

16            MR. BORRIELLO: The trustee is -- sorry. Jared  
17    Borriello, for the record, Chapter 7 trustee.

18            We are -- the trustee is fine accepting discovery  
19    requests in letter format, subject to our right to object and  
20    respond accordingly. The form of the request is not the --

21            THE COURT: Yeah, of course; you'd preserve all of  
22    responsive defenses. Okay.

23            MR. BORRIELLO: We would ask, as you said, that they  
24    be served in a comprehensive manner, rather than one off  
25    requests, just for administrative purposes and efficiency.

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1 With respect to Mr. Kossoff's past requests, I have  
2 been coordinating with Valley Bank to send him hard files of  
3 what I understood is what he wanted. I believe they were sent,  
4 but I can let Valley's counsel speak to that.

5 As to the IRS proof of claim, we can send him a copy  
6 of that document. That's not a problem.

7 THE COURT: Great.

8 MR. BORRIELLO: So I think that covered everything he,  
9 Mr. Kossoff, raised.

10 I would raise one issue for Your Honor. To the extent  
11 he is requesting documents that would involve spreadsheets or  
12 financial information, I'm not sure how we could produce  
13 certain documents to him, given his limitations in accessing  
14 only hard copy files, given, if you would print some of these  
15 files, you're talking about tens of thousands, potentially, of  
16 pages.

17 THE COURT: Okay. Yeah, I don't have to get into that  
18 on --

19 MR. BORRIELLO: Yeah.

20 THE COURT: -- the spot today. But we'll have to  
21 figure that out. So yeah, we'll just have to -- I'll let you  
22 and he try to communicate about that. I take your point.  
23 Right, you're talking about information that exists in  
24 electronic form and --

25 MR. BORRIELLO: In electronic form.

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1 THE COURT: -- when you print it you get a mess.  
2 Okay. Understood. So I'm going to let you and he -- that's  
3 not ripe for today, but I'll want you to try to work out  
4 something constructive.

5 MR. BORRIELLO: I just wanted to flag it, because we  
6 may have to contact the facility to see if they can provide  
7 some accommodation.

8 THE COURT: Yeah, if that's doable. Yeah, that's a  
9 challenging circumstance for sure. Okay. So look, I think  
10 that covers Mr. Kossoff's things.

11 MR. KOSSOFF: One other thing.

12 THE COURT: Yeah. Okay. Let me finish my --

13 MR. KOSSOFF: The reorder --

14 THE COURT: Let me finish my sentence. Hang on. I'll  
15 come back to you. Let me finish my sentence. So far, of the  
16 issues Mr. Kossoff has raised, which are all appropriate for  
17 raising, I think we're okay. This doesn't cause a deviation  
18 from the scheduling sequence Mr. Borriello described. And then  
19 I'll want everyone to proceed as described.

20 You're good making letter discovery requests as long  
21 as they're not piecemeal. And it sounds like everyone's  
22 working on the information you previously requested.

23 MR. GOODMAN: Yes.

24 THE COURT: If something got lost in the mail, they  
25 can try to resend and make sure you put legal mail on it or

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1 whatever the facility needs.

2 MR. GOODMAN: If I may, Your Honor?

3 THE COURT: Oh, yeah, go ahead. Is that counsel for  
4 VNB?

5 MR. GOODMAN: It is, Your Honor. Thank you. I just  
6 wanted to add one thing. So --

7 THE COURT: Yeah. Say your name for the transcript.  
8 Go ahead.

9 MR. GOODMAN: I apologize, Your Honor. Bruce Goodman,  
10 with the law firm of Zeichner Ellman & Krause, on behalf of  
11 Valley National Bank and VNB New York LLC.

12 To add to what Mr. Borriello was saying, within the  
13 last ten days, we mailed to Mr. Kossoff the identical set of  
14 documents that we previously produced to the trustee in  
15 connection with our ongoing settlement talks, which constitutes  
16 the bank's loan file and underwriting file for the two loans  
17 that are the subject of the adversary complaint.

18 So Mr. Kossoff, if he hasn't already received those,  
19 should be receiving those shortly. I don't know how long it  
20 takes for them to get to him. But they were mailed, as I said,  
21 about ten days ago.

22 And concerning future discovery, it's all the  
23 documents we have. So to the extent that Mr. Kossoff wants to  
24 serve formal document demands, whether by letter or otherwise,  
25 these are the documents we would produce. So he has --

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1 THE COURT: Okay. Great.

2 MR. GOODMAN: He has all of the documents.

3 THE COURT: Okay. That's helpful.

4 MR. GOODMAN: Or will shorty.

5 THE COURT: I got it. Okay. So Mr. Kossoff, just  
6 keep an eye out for your incoming mail --

7 MR. KOSSOFF: Can I --

8 THE COURT: -- for that. And if it doesn't show up,  
9 in some normal amount of time for your circumstances, with a  
10 little bit of a margin, just let folks know. I'm sure they'd  
11 be happy to resend. And if --

12 MR. KOSSOFF: I've had documents --

13 THE COURT: -- there's specific labeling, let them  
14 know. Go ahead.

15 MR. KOSSOFF: I've had documents that have been sent a  
16 couple of days ago that I've received. What I fear is that VNB  
17 counsel didn't address them correctly. Trustee counsel knows  
18 how to address them, but it has to be -- the first line of the  
19 addressee has to be legal mail, then my name, then my DIN  
20 number, then the address. And if VNB counsel has not addressed  
21 them in that fashion, they will be returned to them.

22 MR. GOODMAN: So I can speak to that, Your Honor. I  
23 addressed them exactly as I was instructed to address them by  
24 Mr. Borriello. He provided me with the address, and it  
25 contained all of those items.



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1 THE COURT: Okay. Look, just give it a little time.  
2 I mean, we're adopting a schedule that has the benefit of  
3 building a little cushion in for exactly this kind of thing.  
4 So it sounds like you should be getting it. And if it doesn't  
5 show up soon, just let Mr. Goodman know, or the trustee, if you  
6 have easier access, and they can let Mr. Goodman know, and it  
7 could be resent. But I don't want to put them to the labor of  
8 that until we give enough time for delivery. Okay.

9 Mr. Kossoff --

10 MR. KOSSOFF: Your Honor --

11 THE COURT: -- you said you had one more thing?

12 MR. KOSSOFF: Yeah. To the extent -- I mean, I don't  
13 really -- I'm not going to require anybody's deposition, and I  
14 don't have any expert. I won't be sending out any  
15 interrogatories. But to the extent that either party wants my  
16 deposition, I just want to remind them that that has to be  
17 arranged directly with the prison, not with me, to be produced.  
18 And I assume I'll have to be present for some sort of zoom  
19 format for it. So I'm just stating that for the record.

20 THE COURT: Okay. Yeah, let me say, our chambers is  
21 very grateful to the folks at the facility, and we have a  
22 standard contact that we use there for logistics. The trustee  
23 might as well. But I'm just going to say anybody is welcome to  
24 contact chambers if they need a contact person. I don't want  
25 to be roped into arranging the deposition, but if you need a

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1 contact, you can contact us; we can provide it. I'm sure  
2 they'll be helpful. They're terrific.

3 And if you need an order from the Court to cause Mr.  
4 Kossoff to be produced -- I think is probably the verb for a  
5 deposition -- we can enter such an order. Just get us a  
6 proposed order. Okay? So it's good we're taking the time to  
7 talk through all of these issues, but so far, I think  
8 everything's manageable.

9 Okay. I think I've heard pretty fully from Mr.  
10 Borriello on the VNB matter. But let me just see if Mr.  
11 Goodman wanted to raise anything else.

12 MR. GOODMAN: Just one last point, Your Honor. As Mr.  
13 Borriello described, we've been in ongoing discussions. I  
14 think they've been conducted in good faith. Notwithstanding  
15 the fact that we've agreed to, and Your Honor will be shortly  
16 entering a case management order, those discussions are still  
17 ongoing.

18 And we intend on reaching out to the trustee shortly  
19 after we've conferred with our client about our latest round of  
20 talks and our expert witness. And I'm not suggesting it will  
21 resolve, but I'm not saying it won't resolve either. But the  
22 fact that the parties are entering into a case management order  
23 doesn't mean that the discussions have broken down or have been  
24 unsuccessful.

25 THE COURT: Right.

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1 MR. GOODMAN: We just --

2 THE COURT: Okay.

3 MR. GOODMAN: -- haven't resolved everything to this  
4 point. With that, Your Honor, if the VNB case is over, I would  
5 request Your Honor's leave to drop off the call.

6 THE COURT: I'm going to say something about it, and  
7 then, yes, you can go.

8 So first let me say, in response to what you said,  
9 that's great. My intention is that people keep talking. It's  
10 just, if talks don't end quickly, I want to put people on a  
11 litigation footing, both so that the case can reach a  
12 conclusion at some reasonable time, and because that sometimes  
13 will incentivize and focus the mind and get people done with  
14 their talks. So I definitely intend to -- there's never an  
15 inappropriate time to talk, and I'm glad you are acting in  
16 accord with that thought.

17 The other thing I want to say is, so having heard all  
18 the parties, the proposed schedule described by Mr. Borriello  
19 is going to be approved. You can just submit it as a proposed  
20 order, maybe referencing notice to all parties in discussion on  
21 the record at today's hearing. And I will get that entered.

22 MR. KOSSOFF: I didn't take --

23 THE COURT: Do you know, Mr. -- sorry, go ahead, Mr.  
24 Kossoff.

25 MR. KOSSOFF: I didn't take the dates down.

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1 THE COURT: Oh, yeah, I'll tell them to you again.  
2 Are you ready? Are you ready?

3 MR. KOSSOFF: Pardon me?

4 THE COURT: I'm going to give them to you again.

5 MR. KOSSOFF: Yes. Okay.

6 THE COURT: Initial disclosures to be served by June  
7 27th; close of fact discovery, October 15; close of all  
8 discovery, including experts, December 15, all of 2023.

9 MR. KOSSOFF: Okay. And just another quick question,  
10 Your Honor. Nothing that is being ordered today precludes me  
11 from, at some point, making a motion for -- sending a request  
12 to have a conference on a possible Rule 7056 motion if I so --

13 THE COURT: Right. I mean, typically -- my very  
14 strong preference is to not consider summary judgment motions  
15 until the close of discovery. They're almost always premature  
16 before that point, and it interrupts -- it delays the  
17 resolution of the case.

18 That said, any party -- this is without prejudice to  
19 any party's right to request anything at any time, really. So  
20 it's primarily -- this is simply putting a roadmap for  
21 discovery in place, and a schedule for discovery, so that we  
22 have defined expectations and deadlines and the case can get  
23 done in good order. Okay.

24 MR. KOSSOFF: Okay. Thank you, Your Honor.

25 THE COURT: All right. So that resolves, I think, the

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1 VNB matter. And let's see; I guess I'll just ask the trustee  
2 to order a transcript of the whole hearing, including this,  
3 just to capture the discussion. We may well want to refer back  
4 to it.

5 All right. So that concludes case number 22-1113,  
6 which is Togut v. VNB.

7 And I think we're ready to proceed to 22-1158, which  
8 is the Roc-Le Triomphe matter.

9 MR. GOODMAN: Thank you, Your Honor. I'm going to be  
10 dropping off. I appreciate it.

11 THE COURT: Okay. Take care, Mr. Goodman.

12 MR. GOODMAN: Thank you.

13 MS. NESTER: Minta Nester, counsel for the Chapter 7  
14 trustee.

15 As Your Honor mentioned, the next item up is the  
16 adversary proceeding number 22-1158. This is a complaint  
17 brought against Roc-Le Triomphe Associates, Hampton Management  
18 Company, and Mr. Kossoff, seeking to avoid transfers totaling  
19 not less than \$1,616,797.55 in connection with the lease on Mr.  
20 Kossoff's personal family residence. Most recently --

21 THE COURT: I'm sorry. Can you give me the dollar  
22 amount again? I just didn't absorb it.

23 MS. NESTER: \$1,616,797.55.

24 THE COURT: Okay. Thanks.

25 MS. NESTER: So recently, as Your Honor will recall,

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1 on April 14th, Roc and Hampton's counsel made a request for  
2 mediation; that's docket number 34. The trustee opposed this  
3 request; that's at docket number 35. And in short, we believe  
4 mediation was premature at this stage and would not be  
5 productive and that discovery was necessary to move forward on  
6 an informed basis.

7 At a conference held on April 26th, the request to  
8 refer the matter to mediation was denied, and an answer  
9 deadline was set for May 16th. At that conference, the Court  
10 also referenced getting us on a discovery schedule that would  
11 be reasonably prompt; that's the transcript at page 13, lines  
12 16 to 21. And in the order that followed, at docket number 44,  
13 there's a reference to the parties may propose a case  
14 management order and discovery order prior to the conference  
15 now scheduled for May 23rd.

16 Consistent with those instructions, answers were filed  
17 on the docket. Mr. Kossoff's answer appears at docket number  
18 47, and Roc/Hampton's answer appears at docket number 48. I'll  
19 note that answer includes fact intensive affirmative defenses  
20 related to, among other things, good faith and the treatment of  
21 the debtor vis-a-vis Mr. Kossoff.

22 Also consistent with the Court's instructions, we sent  
23 counsel for Roc and Hampton a proposed case management order on  
24 May 9th. It had dates that would have been keyed off the May  
25 16th answer deadline. In response, counsel indicated that they

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1 would like to move for judgment on the pleadings.

2 For similar reasons that we stated in connection with  
3 the mediation, we don't believe that this is a situation that's  
4 appropriate for dispositive motions before the end of  
5 discovery. As we stated at the mediation conference, discovery  
6 is necessary here, given the assertions by the parties. And  
7 there's been nothing to change that, certainly nothing  
8 contained in the answer. Rather, it would deprive the trustee  
9 of the ability to obtain the documents and information that we  
10 need.

11 And we believe this echoes sentiments that the Court  
12 has made at that conference, again, the conference on April  
13 26th, transcript 22, lines 19 to 23. Generally, it's  
14 inefficient and usually not justified to entertain summary  
15 judgment motions until the end of discovery. Certainly this is  
16 a motion for judgment on the pleadings, but we also believe it  
17 would be inefficient and not aid resolution.

18 So for those reasons, we would respectfully request  
19 that the Court direct the parties to confer about a case  
20 management order with discovery deadlines.

21 THE COURT: Okay. And you haven't had discussions, as  
22 of this minute, about what those dates would look like?

23 MS. NESTER: Our draft contained proposed dates. I do  
24 know that counsel has indicated that we would want to work  
25 those out, so I'm happy to tell the Court what those were. I

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1 don't believe that's where we were --

2 THE COURT: Okay. Well, no, my question was just is  
3 there a meeting of the minds on that, I guess. And the answer  
4 is certainly not a meeting of the minds. That's fine.

5 Okay. So let me say something, and then turn to  
6 counsel for Roc-Le Triomphe. The something I want to say is  
7 Ms. Nester has done a nice job of quoting my own words, saying  
8 my general opinion, which I continue to hold, which is these  
9 cases deserve to move and have a discovery schedule.

10 I will say I have a principled reticence about my own  
11 power to tell people they may not move, although I can control  
12 the timing. So I'm going to let Roc-Le Triomphe describe what  
13 their contemplated motion is, but with a very great likelihood  
14 that, at best, I might let you file it without delaying  
15 discovery, and I might reserve the right to rule on it without  
16 requiring the trustee to respond, if I eyeball it and think  
17 it's just clearly not viable. However, I might, on the other  
18 hand, ask the trustee to brief it up, if that's not the case.

19 So having said all that, let me hear from counsel for  
20 Roc-Le Triomphe, and get your take, including an explanation of  
21 what you want to do.

22 MR. LEVY: Good morning, Your Honor. Richard Levy of  
23 Pryor Cashman, on behalf of the defendants, Roc-Le Triomphe and  
24 Hampton Management. I'm joined by my colleague Andrew  
25 Richmond. And co-counsel, Michael Kramer, is also on the line.



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1           Your Honor, before I get into details, let me just  
2     indicate that our preliminary discussions on case management,  
3     to my knowledge, have not included Mr. Kossoff directly. So I  
4     can't speak to whether or not any particular deadlines or  
5     intervals are or are not acceptable to him. We can obviously  
6     deal with that, I suppose, as we move forward.

7           Your Honor, let me supplement Ms. Nester's overview of  
8     the status of the matter. As you know, Your Honor, the parties  
9     spent a long time before the answering phase in an attempt to  
10    resolve the matter consensually. That, regrettably, did not  
11    work, despite what I believe are our best intentions and, I  
12    assume, the trustee's best intentions. And the trustee made  
13    the point to Your Honor that it wanted to proceed into  
14    discovery and get this case moving.

15          Between the time of the conference on mediation, at  
16    the end of April, and the time that we filed our answer,  
17    roughly a week ago or ten days ago, we spent a lot of time  
18    reviewing, scrubbing, considering the allegations in the  
19    complaint, and applicable law relevant to it, and came to the  
20    conclusion that we have viable motions for judgment -- a viable  
21    motion for judgment on the pleadings on a number of grounds  
22    that I will summarize in a moment for Your Honor.

23          I recognize that we are on the threshold of discovery.  
24    However, the trustee, having indicated at the last conference  
25    that he intended to get moving into the discovery phase,

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1 obviously, Your Honor, the right to file a motion that may be  
2 dispositive of some or all of the claims at this point is  
3 something that we view is very important and relevant both to  
4 case management and to the further proceedings in this case.  
5 If we are correct, there may be a substantial narrowing of the  
6 issues for which discovery is required and potentially all  
7 issues or virtually all issues. So for that --

8 THE COURT: Wait. Is this a partial motion or  
9 formally a motion for complete judgment on the pleadings as to  
10 the --

11 MR. LEVY: Your Honor, we are in the process of  
12 evaluating that right now. We believe we have -- now would be  
13 a good point for me to summarize what our thinking is.

14 Your Honor, number one, let me remind the Court, as  
15 Ms. Nester told you, that there were 1.6-plus million dollars  
16 of transfers at stake. Roughly 960,000 of that are what are  
17 called direct transfers in which the trustee alleges that the  
18 monies were paid directly by the debtor.

19 The balance -- I forget the exact number, but the  
20 balance, based on the mathematics, are what are called indirect  
21 transfers, where the complaint alleges, on its face, the  
22 transfers went from the debtor to Mr. Kossoff, and then from  
23 Mr. Kossoff to my clients. That's what are called the indirect  
24 transfers.

25 I'm going to start there because we believe, based on

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1 the complaint, we've got a motion for judgment on the  
2 pleadings, based on the defenses of the subsequent transferee  
3 under Section 550(b), and that would resolve forty percent  
4 of -- let's call it roughly forty percent of the monetary  
5 claims at issue.

6 Number two, Judge, on the direct transfers, the  
7 balance of the transfers direct, we believe that there is a  
8 defense, as a matter of law, based on our client's status as a  
9 holder in due course of checks that were issued by the  
10 trustee -- excuse me, by the debtor, in payment of those 960-  
11 some-thousand dollars of direct transfers.

12 Thirdly, Your Honor, the trustee has a complaint for  
13 unjust enrichment. We believe that, under applicable law and  
14 jurisprudence, that claim is not viable under either the in  
15 pari delicto standard, the Wagoner Doctrine, or otherwise.

16 We certainly believe that the existence of the lease  
17 will defeat the unjust enrichment claims as they relate  
18 certainly to the indirect transfers. But whether it reaches  
19 the directs is another question. But again, the existence of a  
20 lease surely resolves the unjust enrichment claim as to the  
21 indirect transfers.

22 Fourth, Your Honor, virtually all of the trustee's  
23 counts allege that Roc and Hampton were persons for whose  
24 benefit transfers were made, which I believe is a not so veiled  
25 attempt by the trustee to assert the equivalent of initial

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1 transferring of liability against Roc and Hampton on all  
2 claims.

3 Now, there is strong jurisprudence, in this court and  
4 in this circuit, to the effect that claims based on "for the  
5 benefit of" don't lie against a party that actually received  
6 the money. Those claims are -- the "for the benefit of" claims  
7 are typically codebtors, guarantors, sureties, and the like who  
8 have not physically received the money but received some  
9 economic benefit by virtue of the transfer to another party.  
10 So we think that all of those claims will drop out as a matter  
11 of course.

12 Finally, Judge, we are evaluating whether, on the face  
13 of the complaint and the allegations concerning the overlap,  
14 for lack of a better word, between Mr. Kossoff and the debtor,  
15 render them a single entity such that payments out could  
16 benefit --

17 THE COURT: Wait, can I jump in?

18 MR. LEVY: Of course, Your Honor.

19 THE COURT: On that one, I don't see how that's a Rule  
20 12 motion. I mean, some of the others sound Rule 12 motion-  
21 like. But is does that last issue going to be a Rule 12  
22 motion?

23 MR. LEVY: Well, if the trustee has admitted that they  
24 were common entities, and Your Honor can make a conclusion that  
25 they were common or commonly-controlled entities, we think that

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1 there is a basis for a determination that the benefit to one  
2 constituted a benefit to both.

3 THE COURT: Isn't that in tension with your direct/  
4 indirect payment dichotomy? You're saying money floated  
5 from --

6 MR. LEVY: Of course --

7 THE COURT: -- PLLC right into Mr. Kossoff, and thence  
8 to you, so if that collapses, you're risking a mess for  
9 yourself.

10 MR. LEVY: We understand that, Your Honor, which is  
11 why I said we are evaluating our position on that --

12 THE COURT: Okay.

13 MR. LEVY: -- at this point. But I wanted to be fair  
14 to Your Honor in explaining the potential scope of our motion.

15 THE COURT: Okay. And why did you not file a motion  
16 and instead choose to file an answer?

17 MR. LEVY: Your Honor, for several reasons. Number  
18 one, we spent most of the first several months of this case  
19 concentrating our efforts and resources on the settlement  
20 process, preparing statements of position, and the like. We  
21 had not contemplated at that point whether or not a motion was  
22 viable, whether or not it was appropriate.

23 In the time since what I will call the suspension of  
24 the settlement process, and the attempt to put the case into  
25 mediation, as I said earlier, we scrubbed our thinking on the

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1 complaint, looked at it in much greater detail, with an eye  
2 towards determining what defenses we had, what admissions and  
3 denials, and that led us to further analysis and research,  
4 which gives us, we believe, the bases to proceed with a motion  
5 at this time.

6 THE COURT: Okay. I got it. And Mr. Levy, turning to  
7 what discovery would look like, what do you need from the  
8 trustee or others to carry out discovery in the case?

9 MR. LEVY: Off the top of my head, Your Honor -- I'm  
10 going to do it sort of in a structured manner. First, we  
11 contemplated internally that we would be taking written  
12 discovery of both the trustee and Mr. Kossoff at the outset.  
13 We contemplated that that would be document requests and  
14 interrogatories. I'm not ruling out whether there was anything  
15 else that would be appropriate, whether it would be requests  
16 for admission or not.

17 I understand that, given Mr. Kossoff's situation being  
18 in state custody, that the question of what we can get from  
19 him, how quickly, and documents, in particular, may be a  
20 complication that we'll have to deal with as a management  
21 issue.

22 We then thought, Your Honor, that after that process,  
23 which in my mind I would think would be thirty days to propound  
24 requests, thirty to forty-five days for responses, possibly a  
25 second round of written discovery, if prompted by the first set

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1 of materials, would then be followed by fact depositions. We  
2 would intend to depose Mr. Kossoff. We would intend to depose  
3 members of Mr. Kossoff's family. We may have other parties we  
4 wish to depose, including the trustee and trustee's analysts,  
5 who have prepared some of the information that we see in the  
6 complaint. I'm not ruling out any other possibilities. That's  
7 what we see at this point.

8 After the close of fact discovery, we have not yet  
9 made a determination of whether we will be retaining an expert  
10 or not. I understand that the trustee has the burden on  
11 insolvency. And I'm going to reserve the right for expert  
12 depositions of at least the trustee's experts.

13 THE COURT: Okay. Got it. All right. So look, it  
14 seems like you're talking a good minimum of a six-month loop,  
15 right?

16 MR. LEVY: On discovery?

17 THE COURT: Yeah.

18 MR. LEVY: Or including the motion practice?

19 THE COURT: No, setting aside the motion practice.

20 MR. LEVY: That's roughly what I contemplated, Your  
21 Honor. I'm looking at a penciled schedule I put up, and I have  
22 a conclusion of fact discovery at the end of the year or early  
23 January, with experts to follow.

24 THE COURT: Okay. All right. Thank you for walking  
25 me through all of that. I mean --

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1 MR. LEVY: And Your Honor, may I step back on that for  
2 a second? That would be a discovery schedule without motion  
3 practice. If we were to proceed with a motion for judgment on  
4 the pleadings, I would propose, in order to avoid unnecessary  
5 expense, and facing the possibility that some -- some part of  
6 the complaint, if not all, drops out of the case, that that  
7 will certainly reduce the discovery burden for all parties and  
8 management issues for the Court going forward. And I would  
9 suggest that the motion process be completed with dates then to  
10 run from the time Your Honor disposes of it.

11 THE COURT: What is your best pushback to my thinking  
12 that, particularly since the case was filed back in October,  
13 it's appropriate to move on discovery, let you file your  
14 motion, twin track it; if you file your motion promptly enough,  
15 you'll have an answer before you get around to anything more  
16 than written discovery anyway, and then we won't have wasted  
17 time.

18 MR. LEVY: Well, Your Honor, it does pose somewhat of  
19 a management issue for my team. We have limited numbers of  
20 people working on the case, and we don't want to overload this  
21 for the client. The client is obviously more interested in  
22 devoting resources to resolving the case consensually, as  
23 opposed to on a litigated matter, as we have repeatedly said to  
24 the Court.

25 That's my basic thinking, Your Honor. We are prepared



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1 to file a motion within a matter of weeks, mid-June, which  
2 would be intended not to prolong the agony, if you will, and  
3 give Your Honor and the parties time to fully brief the matter,  
4 and for the Court to make an educated determination, at which  
5 point there may be not much more to do, or there may be more to  
6 do.

7 THE COURT: Okay. I mean, I'll just say that's three  
8 weeks from now. A normal briefing cycle might end at the end  
9 of July.

10 MR. LEVY: Your Honor, I asked the trustee when we  
11 started; I explained that we would be prepared to file our  
12 motion mid-June, and we would be prepared to work with them on  
13 whatever period of time they wished for a response. And we  
14 would obviously want a couple of weeks, maybe three weeks, for  
15 our reply.

16 THE COURT: Yeah. Let me hear from the trustee about  
17 all this.

18 MS. NESTER: Minta Nester, counsel for the Chapter 7  
19 trustee.

20 Two general responses, Your Honor. The first is we'd  
21 certainly like to move forward with discovery, twin track  
22 through any motion that may go forward. We think that there is  
23 an importance in getting on this discovery schedule, litigating  
24 this case, moving towards a resolution that way. We think  
25 these are documents and materials we need to be able to

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1 evaluate this matter.

2 I also believe we would be able to do so on a time  
3 line a little bit shorter than what counsel referenced. And so  
4 I would propose a --

5 THE COURT: Sorry. A briefing schedule or a --

6 MS. NESTER: Oh, I apologize, Your Honor.

7 THE COURT: -- discovery schedule?

8 MS. NESTER: A discovery schedule that's a little bit  
9 shorter than what counsel proposed. So I would ask that we  
10 move forward with the discovery. We can meet and confer about  
11 specific dates, as I think we're on the same track with regards  
12 to the steps, initial disclosures, written discovery, fact  
13 depositions, and expert discovery. And then if the Court would  
14 like to allow this motion to move forward at this time, before  
15 the close of discovery, to set a briefing schedule for that,  
16 but to not hold up the --

17 THE COURT: All right. Yeah, I got it. Here's  
18 what -- I'm going to cut you off, because I think I have a  
19 pretty clear sense of what I ought to do, and I'll explain why.  
20 And this also I recognize -- I am not losing sight of the fact  
21 that Mr. Kossoff is a defendant as well. So this really  
22 governs two of the parties, I guess, Roc-Le Triomphe and  
23 Hampton Management.

24 So Mr. Levy has persuaded me that he's describing a  
25 thing that sounds like a -- it does sound like a threshold

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1 sufficiency of the pleadings type motion. And so I'm willing  
2 to have that be filed and not, sort of, use my case management  
3 authority to tell him, no, that's an end of discovery motion.

4 But I do -- I think the -- I am going to want twin  
5 tracking. I will, a little bit, cushion the blow by  
6 contemplating that I'll approve a discovery schedule that  
7 let's -- I'm going to tell you all to talk off line and submit  
8 a proposed scheduling order that's a combo briefing schedule.  
9 And you can contact chambers for an argument date as part of  
10 that, as well as discovery schedule.

11 It is to be twin tracked. If you want to slightly  
12 push out your commencement of discovery date to maximize the  
13 prospects of a narrowing of issues, particularly before you get  
14 to fact -- to discovery -- excuse me, to depositions, or other  
15 burdensome steps, I would listen to that.

16 Mr. Levy described a sort of standard, somewhat  
17 leisurely briefing approach. I mean, not crazily leisurely,  
18 but the kind of thing that I might be more receptive to. I  
19 don't like to impose impossible schedules on people, but the  
20 case is six months old, so I don't want to just say, oh, we can  
21 now just act as if six months haven't passed. This is sort of  
22 the price of the amount of leeway you got before, and we need  
23 to move towards results.

24 So bottom line, please talk, work out a briefing  
25 schedule. You're going to have to, sort of, use your judgment

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1 to balance your desire to have an answer and a narrowed scope  
2 of discovery sooner versus your desire to have a lifestyle  
3 sustainable briefing sequence. And also you're going to have  
4 to, sort of, put discovery in place at the same time because,  
5 given the passage of time, I don't want things to carry on.

6 It sounds like you don't -- I think you two need to  
7 have a discussion. And so I'm not going to try to lock in  
8 dates on the spot. But that does raise the complication of Mr.  
9 Kossoff's scheduling needs.

10 So let me just ask Mr. Kossoff this. If we have a  
11 discovery schedule that's comparable to the VNB case that was  
12 just discussed, is that something that's viable for you? I'm  
13 wondering if we can sort of preemptively lock in dates that are  
14 going to be acceptable?

15 MR. KOSSOFF: I have not --

16 THE COURT: Again, I'll repeat what those were. Yeah,  
17 Go ahead, Mr. Kossoff.

18 MR. KOSSOFF: Yes, I have them. I have them. And I  
19 don't have a problem with them. I would just -- the only thing  
20 I would say, because I've been thinking about these  
21 interrogatories, and you know my ability to respond is somewhat  
22 limited to a typewriter, but not on JPay.

23 And neither VNB counsel, nor counsel for Roc-Le  
24 Triomphe -- and I don't think that -- I'm not trying to cast  
25 aspersions -- have come on JPay with me. But if counsel for

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1 Roc-Le Triomphe would come on JPay, then I would have somewhat  
2 of a word-processing ability in responding to interrogatories,  
3 which would, I believe, be helpful to me, and probably help me  
4 make these deadlines. And also, VNB counsel, despite, I think,  
5 suggestions, has failed to do that, which makes it difficult  
6 for me as well --

7 THE COURT: Okay.

8 MR. KOSSOFF: -- should they propound interrogatories.

9 THE COURT: So let me just say this, that --

10 MR. KOSSOFF: That's my --

11 THE COURT: Yeah, hang on, Mr. Kossoff. Thank you for  
12 raising these things.

13 I should say for the record, Mr. Kossoff is on phone,  
14 not Zoom, at least he doesn't have a video feed, which makes it  
15 harder for him to see when I'm starting to talk, so we have a  
16 little crosstalk, but no fault of his own.

17 So let me encourage everyone, to the extent possible,  
18 to get on JPay and facilitate that. I'm not going to require  
19 it. I think it may be that there's -- there may well be, for  
20 all I know, firm computer system concerns, or you may have to  
21 download software that firm's security people may be very  
22 reticent about doing.

23 But think about it in good faith, because that is  
24 going to make case management a lot better, and it's going to  
25 make Mr. Kossoff's ability to engage with you and work on the

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1 case a lot better. So take a good hard look at that. I'm not  
2 requiring it because I don't know that everyone's going to be  
3 prepared to talk about it, but think about it. All right. And  
4 thanks.

5 So let me make the following suggestion as the parties  
6 talk about their proposed scheduling order. So we just heard  
7 Mr. Kossoff was okay with the broad sequence of discovery dates  
8 from the prior VNB case which is, again, initial disclosures,  
9 June 27; close of fact discovery, October 15; close of all  
10 discovery, including experts, December 15.

11 I'm going to be fine with those dates, and I'm going  
12 to take it that Mr. Kossoff, who's just said those are fine, is  
13 going to be fine with those in this case as well. If you want  
14 later dates, I'll look at them. If you want -- but I'll say,  
15 let's not set any earlier dates than those. And that way we  
16 have locked in that those are viable dates for Mr. Kossoff as  
17 well and fair dates for Mr. Kossoff as well.

18 Okay. So when you're finalizing your proposed  
19 discovery schedule, just don't pick dates earlier than that.  
20 And that way we will know we have something viable, and we  
21 don't have to wait for a further round of communications that  
22 could be cumbersome.

23 Yeah, go ahead, Mr. Levy.

24 MR. LEVY: Your Honor, would you please repeat those  
25 dates?

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1 THE COURT: Oh, yeah, sure. Okay. Initial  
2 disclosures shall be served on or before June 27. Close of  
3 fact discovery, October 15 -- on or before October 15. And  
4 close of all discovery, including expert discovery, December  
5 15.

6 MR. LEVY: And I understand what Your Honor is saying,  
7 the dates should be -- those intervals should be no earlier  
8 than those dates, but depending upon how the parties discuss,  
9 and what Your Honor's view is of a case management order, later  
10 dates may permit.

11 THE COURT: That's exactly right. I will say I like  
12 those dates pretty much, so don't be too greedy. But I do  
13 like -- but that is correct; you have my point. Okay?

14 MR. LEVY: Thank you, Your Honor.

15 THE COURT: All right. I think --

16 MR. KOSSOFF: Your Honor?

17 THE COURT: Yeah --

18 MR. KOSSOFF: I had one or --

19 THE COURT: Yeah, go ahead, Mr. Kossoff.

20 MR. KOSSOFF: -- two other things. Okay. I already  
21 feel like, to some extent, I've been sandbagged today. And I  
22 don't mean it in any kind of sense that it's purposeful or  
23 intentional. But there's been a discovery order that's been  
24 floated between parties, and I have not received it. And so I  
25 have to respond on the fly to dates. And I would just remind

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1 everybody that I am a party in this proceeding and that I  
2 should be getting copies of these documents well before a  
3 conference date.

4           The other thing I would say is, with respect to this  
5 judgment on the pleadings, that I know there is a flaw in the  
6 pleadings that I pointed out in my answer, and I might want to  
7 either join in the motion, or certainly -- so that I think that  
8 if there's going to be motion practice dates -- and all of  
9 these dates do affect me because, in fact, if the trustee is  
10 successful in some of his -- I mean, if Roc-Le Triomphe doesn't  
11 want to -- is successful in some of these defenses, it may  
12 affect my own liability.

13           So I would like to be included in discussion with  
14 respect to these motion practice dates. I do have one theory  
15 that I put in my answer with respect to the trustee's failure  
16 to allege a triggering creditor. I think it's a scrivener's in  
17 their complaint, because all the other adversarial proceedings  
18 that I have looked at, and there have been many, do have the  
19 standard incantations about the IRS as a predicate creditor.

20           But unfortunately, they're missing in this complaint.  
21 And I think that it probably will necessitate for them an  
22 amendment of their pleadings. If they don't amend their  
23 pleadings, then of course a statute of limitations of six years  
24 would apply on fraudulent transfers. And the only statute that  
25 would apply would be the bankruptcy rule for two years from the



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1 bankruptcy filing date, which would severely emasculate their  
2 claim.

3 THE COURT: I got it. Yeah. Mr. Kossoff --

4 MR. KOSSOFF: So I've got that --

5 THE COURT: Hang on, Mr. Kossoff. So am I right that  
6 you're able to communicate with the trustee's counsel using  
7 JPay? You didn't mention --

8 MR. KOSSOFF: I am.

9 THE COURT: Okay. That's great. So here's my  
10 reaction to this. It's pointless and a waste of money and time  
11 for you to write a whole motion about something you think is a  
12 scrivener's error, that sounds like it may well be, because I  
13 know they've alleged IRS is triggering creditor many, many  
14 times over in other cases.

15 So I'd suggest you just email the trustee's counsel.  
16 I don't want to see a separate motion -- first off, I'm not  
17 precluding you from filing any motion; I should say that  
18 explicitly. Okay, Mr. Kossoff? You are not precluded from  
19 filing any motion.

20 However, this does seem like a big waste of effort, if  
21 you're right that you're simply identifying a scrivener's error  
22 in their complaint. So why don't you just email them, raise  
23 it. I will tell you I'm going -- there's no reason for me not  
24 to allow an amendment, at some appropriate point, if necessary,  
25 in their view. But I don't want to derail the case or cause

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1 you or anyone to write a whole motion over that. It seems like  
2 something that's readily fixable. Okay?

3 MR. KOSSOFF: I agree, Your Honor.

4 THE COURT: So that's my thought about that. Your  
5 broader point about dates, so a couple of things. This is why  
6 I asked you at this kind of -- this is pretty clearly sort of a  
7 conference that was set up for the purpose of setting a  
8 schedule. And that's why I asked you about the dates. I  
9 wanted to hear from you on the record. And so I'm trying to  
10 make sure you're not prejudiced in that way.

11 Parties can talk among themselves. But I guess I  
12 would say, if you want to be filing a motion, you're not being  
13 precluded from doing so. And you can just communicate,  
14 certainly with the trustee, easily, about scheduling matters  
15 using JPay. Okay?

16 But for now, I'm just setting an order based on the  
17 discussion that came to me. Most importantly, from my point of  
18 view, getting a discovery schedule in place, which covers your  
19 needs. And then we have the unexpected, to me, development of  
20 the other defendants wanting to file a 12(c) motion, which  
21 we've covered. Okay?

22 MR. KOSSOFF: Yes, Your Honor.

23 THE COURT: So I think that's all we need to do today.  
24 All right. Mr. Kossoff, am I right; these are the two cases in  
25 which you're a defendant on today's calendar? I think so.

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1 MR. KOSSOFF: I've been told by the facility that I  
2 have to go off line. Apparently, they've only allotted me an  
3 hour --

4 THE COURT: Okay.

5 MR. KOSSOFF: -- for the --

6 THE COURT: That's fine, I think we -- oh, look at  
7 that. Okay. I will just say to maybe comfort you -- let me  
8 quickly ask; am I right -- I'll ask the trustee, anything else  
9 in which Mr. Kossoff is a party on the calendar for today? I  
10 think not.

11 MS. NESTER: No, Your Honor.

12 THE COURT: Okay. So good news, Mr. Kossoff. We got  
13 in just under the wire. We're completed with your matters. I  
14 wish you a good day and good health and good luck. All right?

15 MR. KOSSOFF: Thank you, Your Honor.

16 THE COURT: And the parties are available, as am I, as  
17 you need us. Thank you. Take care.

18 MR. KOSSOFF: Okay. Thank you, Your Honor. All  
19 right.

20 THE COURT: Okay.

21 MR. LEVY: Your Honor, may we be excused at this  
22 point?

23 THE COURT: Yes. That was Mr. Levy. That's a  
24 rolling --

25 MR. LEVY: Yes, it was, Your Honor. Sorry.

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1 THE COURT: No problem. That's a rolling practice and  
2 permission of mine. Once your matter's done, you're free to  
3 go. Okay?

4 MR. LEVY: Thank you, Judge.

5 THE COURT: Thank you.

6 The next case on the calendar is --

7 MR. KOSSOFF: Thank you, Judge.

8 THE COURT: Yes, you're welcome. Nice to see  
9 everybody.

10 Okay. The next case is 22-1141, the case in which  
11 Perevoski and others are defendants. And there may be a  
12 bundling that's possible.

13 Well, let me just turn to the trustees counsel. How  
14 do you want to proceed for the balance of the calendar? We've  
15 got a long list.

16 MS. NESTER: Yes, Your Honor. Minta Nester, counsel  
17 for the Chapter 7 trustee.

18 What I propose is to allow my colleague, Mr.  
19 Borriello, to cover some of the motions that -- or sorry --  
20 some of the adversary proceedings that have been here before  
21 and touch base on general status of the case. And then I can  
22 walk the Court through some of the newer adversary proceedings  
23 that hit the docket.

24 THE COURT: Okay. Great. Oh, I should tell the --  
25 let me say this for all the parties. We asked the trustee to

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1 provide us a chart of all of the adversaries on today's  
2 calendar, just identifying basic information, case name, docket  
3 number, identity of opposing counsel, if known, status of  
4 service, whether a response has been filed yet, and what, if  
5 any, adjournments have been granted.

6 So they provided me such a thing, and I will say, with  
7 occasional additional status notes, all factual, none advocacy.  
8 So if any party wants a copy of that, please provide -- just  
9 ask the trustee; I'm sure they'll provide it. It's a very  
10 benign document. I wanted to make sure people were aware of  
11 that communication, which was helpful to me, and I'm sure  
12 they'll share. Okay.

13 Yeah. So go ahead, Ms. Nester. And what you  
14 described is fine, and whatever sequencing and bunching you all  
15 think makes sense is going to work for me. I guess is Mr.  
16 Borriello going to start us off?

17 MS. NESTER: Yes, Your Honor.

18 THE COURT: Okay. Great.

19 MR. BORRIELLO: Yes, Your Honor. So Jared Borriello.  
20 I will be addressing adversary proceeding 22-1141.

21 THE COURT: Yes.

22 MR. BORRIELLO: So I'm happy to report that the  
23 trustee has reached settlements with several defendants,  
24 including Ernest Perevoski, Terri Abbey, Ronny Mintz, Chalron  
25 Enterprises, and Ms. Lee. And we're filing a 9019 motion

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1 seeking approval, either by the end of this week or early next  
2 week at the latest, and if approved by the Court, it should  
3 bring in an aggregate of approximately 900,000 dollars for the  
4 estate.

5 THE COURT: Great.

6 MR. BORRIELLO: So I just wanted to flag that for Your  
7 honor. So that will be filed soon. And we anticipate that,  
8 for case management purposes, putting it on for, likely the  
9 July 12th hearing, which is already on the Court's calendar --

10 THE COURT: Okay.

11 MR. BORRIELLO: -- or sooner, won't burden the Court  
12 with additional dates.

13 As to the remaining, there are three other defendants  
14 remaining: Mr. Boswell, the estate of Phyllis Kossoff, and  
15 then Peter Xenopoulos and Xenopoulos Realty, LLC. The trustee  
16 has engaged in settlement discussions with all of those  
17 parties. But at the same time, as with the Valley Bank  
18 proceeding, given the length of time that has passed, we think  
19 it's time to move the case forward. And while we'll continue  
20 to discuss settlement with those parties, we're proposing that  
21 a case management or scheduling order be entered using  
22 substantially the same dates we proposed and Your Honor has  
23 approved in the other case management orders.

24 THE COURT: Okay. First, congratulations on the  
25 settlement. And does anyone want to be heard with respect to

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1 the scheduling proposal voiced by Mr. Borriello?

2 MS. URBAN: Yes. Good morning, Your Honor. Veronique  
3 Urban of McGrail & Bensinger LLP. We represent the defendant,  
4 John Boswell, in this adversary proceeding.

5 We did receive a copy of the scheduling order from the  
6 trustee's counsel, but we were under the understanding that Mr.  
7 Boswell would not be subject to these deadlines as of yet, as  
8 we are trying to settle this case. And our defendant has a  
9 difficult financial condition, and we are trying to settle  
10 before having to incur any fees relating to discovery.

11 We have sent numerous documents to the trustee's  
12 counsel in an effort to settle. So we just wanted  
13 clarification from the trustee's counsel that these dates do  
14 not apply to Mr. Boswell.

15 THE COURT: Okay. I'm going to guess -- well, they  
16 just said they intend to impose dates on you, right, Mr.  
17 Borriello?

18 MR. BORRIELLO: Yes. So the trustee's view is we've  
19 built flexibility into the schedule. We pushed even the  
20 disclosures at least over a month. And while we do hope to  
21 reach a resolution with Mr. Boswell -- I mean, he has provided  
22 significant documents -- we still need the case to move  
23 forward.

24 THE COURT: Yeah. Let me say, Ms. Urban, I'm not a  
25 mere passive bystander. And so I will add that that's very

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1 much my wish, that we get a schedule in place that applies to  
2 everybody who hasn't settled. I hear what you're saying and I  
3 respect it. And my thought would be just what's described,  
4 which is make the initial date far enough away that you have an  
5 opportunity to come to the table. But if you're not going to  
6 be able to get it done quickly, then the discovery process just  
7 has to kick in.

8 MS. URBAN: I --

9 THE COURT: And you had another point, it looks like?

10 MS. URBAN: Yes, I do understand that, Your Honor.

11 Thank you. Perhaps the trustee may be able to make one  
12 accommodation, which is that the scheduling order, as it  
13 currently is drafted, states that there cannot be any amendment  
14 of the scheduling order unless there is proof of cause beyond  
15 the party's control for a delay. So perhaps the language could  
16 be modified --

17 THE COURT: I see.

18 MS. URBAN: -- in such a way to allow an amendment of  
19 the scheduling order if there continues --

20 THE COURT: Yeah. Let me say -- I'm going to  
21 interrupt you. I think they probably stole from language I  
22 generated, and I would agree to relax that. I always want to  
23 have deadlines set forth in an order subject to court approval,  
24 like, not be modifiable without court approval.

25 But if you want to either add words or take words



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1 away, you could take the words away "beyond the party's  
2 control", or you could just add "or to facilitate settlement  
3 discussions" or something like that. That's okay with me in  
4 the circumstances.

5 But I do want to keep the Court approval requirement  
6 in place basically so that, if either side is dissatisfied, it  
7 comes to me, and also so that you can't conspire among  
8 yourselves to cause my case management efforts to unravel.  
9 Okay?

10 MS. URBAN: Understood. That's fine, Your Honor.  
11 Thank you.

12 THE COURT: Okay. Any other defendants on case number  
13 22-1141 want to be heard?

14 MR. SHERMAN: Your Honor, Todd Sherman, on behalf of  
15 Pardalis & Nohavicka. We represent those Xenopoulos  
16 defendants.

17 THE COURT: Um-hum.

18 MR. SHERMAN: We have a similar issue. However, we  
19 just want to put on the record we have concerns about potential  
20 ability to comply with a discovery order. Our client, Mr.  
21 Xenopoulos, is very ill. We've disclosed this to our  
22 adversary, and it was his suggestion, actually, that we inform  
23 the Court, rather than include it on a written order or  
24 anything like that.

25 THE COURT: Yeah.

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1 MR. SHERMAN: It was a good idea on his part, and we  
2 appreciate that. He's very ill, and his wife is suffering from  
3 a terminal condition. We're having difficulty contacting him  
4 at this point. He's also of extremely limited financial means,  
5 thanks to the COVID pandemic, which destroyed his business.

6 So while we understand that we need to get an order in  
7 place, we just wanted the record to be clear that it is quite  
8 possible, not our intention, but it is quite possible that we  
9 would be seeking some sort of leave to enlarge our time if  
10 these medical conditions continue, which we anticipate, which  
11 will delay our ability, in the best of faith, to comply with  
12 any demands that the trustee intends to make or --

13 THE COURT: Okay.

14 MR. SHERMAN: -- for us to be able to meaningfully  
15 demand discovery in defense of the matter. So we just wanted  
16 the Court to be aware, so that if we do make an application  
17 later, it was clear that we did inform the Court at the  
18 earliest possible moment.

19 THE COURT: Okay. Great. Well, hopefully we'll have  
20 a transcript, and we keep chambers notes of all of these things  
21 too. We'll make sure to make a note of that so that, if we  
22 hear from you on a future application, we won't be shocked and  
23 you will have helped pave the way for that. But it makes sense  
24 for you, in the meantime, to put some sort of date structure in  
25 place, though, yes? I don't hear you saying otherwise.

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1 MR. SHERMAN: No, of course, it makes a lot of sense.  
2 And I share with cocounsel Ms. Urban's view that we have to do  
3 it, but we do want just to make the Court aware of what our  
4 situations are. And we do hope that we could come to some  
5 resolution as well. But at the same time, we're impaired in  
6 our ability to communicate.

7 THE COURT: I got it. Okay. That's fine. And let me  
8 not fail to say best wishes to your clients and family. It  
9 sounds very difficult.

10 MR. SHERMAN: Thank you, Your Honor.

11 THE COURT: So I'm sensitive to that.

12 MR. SHERMAN: And we will convey that.

13 THE COURT: Okay.

14 MR. SHERMAN: Thank you.

15 THE COURT: Yep. Any other defendants want to be  
16 heard?

17 Okay. I saw a negative head shake, and nobody's  
18 speaking up. So you can just finish the talks you're having,  
19 and finalize dates, and get it in as a proposed order.

20 Do you want to -- I think probably it makes sense to  
21 just put this down on a status conference, maybe for the July  
22 12th date, when I'm seeing a lot of people, just in case. I  
23 will say, so far I've heard from lawyers for two clients of no  
24 means, and I don't want to make everyone show up and spend  
25 money for no reason, but I'm available for a check-in. You can

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1 cancel it, or people can just -- if you trust Mr. Borriello to  
2 just give a status report, you don't have to show up, whatever  
3 works for you all. Okay? I just want to keep an eye on  
4 things. Workable?

5 MR. SHERMAN: Thank you, Your Honor.

6 THE COURT: Okay.

7 MS. URBAN: Yes. Thank you, Your Honor.

8 THE COURT: Okay. I think that covers 1141, yes, Mr.  
9 Borriello?

10 MR. BORRIELLO: Yes, Your Honor. Just to clarify, so  
11 I understand Your Honor is saying that we should proceed with  
12 entering or proposing a scheduling order, but also put on the  
13 calendar a placeholder status conference for the 12th?

14 THE COURT: Yeah, I think so. Does that --

15 MR. BORRIELLO: That makes sense.

16 THE COURT: Let's do that, because then that's at  
17 least probably after your initial disclosure date. It might  
18 help you all get to the finish line with some, as of yet, not  
19 finished negotiations. And so we'll just see where we are.  
20 Okay?

21 MR. BORRIELLO: Okay.

22 THE COURT: And like Mr. Sherman, with his clients'  
23 problems, that would be a built-in opportunity for him to raise  
24 any concerns he's got.

25 MR. BORRIELLO: Understood, Your Honor.

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1 MR. SHERMAN: I hate to be the bearer of scheduling  
2 issues, but I will likely be away that week.

3 THE COURT: Okay.

4 MR. SHERMAN: And I don't know that I would have  
5 suitable coverage, based on the numerosity of these cases.  
6 Now, I would have complete faith in Mr. Borriello conveying an  
7 accurate status.

8 THE COURT: Okay. That's fine.

9 MR. SHERMAN: I wouldn't worry about that. But I  
10 don't believe that my absence would assist in any resolution.  
11 I certainly believe Your Honor would be well advised, but I  
12 don't know how far we would be able to push forward in my  
13 absence. I would be back in late July. But I don't want to  
14 change Your Honor's calendar. I just want to put you on  
15 notice. That is all.

16 THE COURT: Okay. Let's just put it down for a status  
17 update or status conference July 12th. I just want to hear a  
18 quick update. And then if anybody affirmatively wants to raise  
19 something, fine. And I'm available other times, but I'm  
20 mindful of trying to let the trustee bundle these cases so they  
21 don't have to show up more frequently than necessary.

22 MR. SHERMAN: Thank you, Your Honor.

23 THE COURT: Okay. Thanks.

24 All right. I think that covers 1141.

25 MR. BORRIELLO: Yes, Your Honor.

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1 THE COURT: Okay. And as I've been saying earlier  
2 today, if you're here just for that matter, you're free to go.

3 And we're on to what case -- whatever case the trustee  
4 wants to do next.

5 MR. BORRIELLO: So I'll be covering -- again, Jared  
6 Borriello for the trustee.

7 I will be covering the next case, next sequentially on  
8 your calendar, which is adversary number 22-1146. It's the  
9 estate of Phyllis Kossoff.

10 THE COURT: Yes.

11 MR. BORRIELLO: This is the adversary proceeding  
12 solely against Ms. Kossoff. I believe Mr. Bolton is on the  
13 line. We are engaged in global settlement discussions, as I've  
14 described previously, that involve the estate as well as other  
15 family members. And with respect to this specific adversary  
16 proceeding, we're proposing just one final adjournment to 7/12  
17 before we enter a scheduling order.

18 THE COURT: Okay. Yeah, that's fine with me -- I'm  
19 mindful of the time -- if that's okay with the defendant. Is  
20 that okay with the defendant?

21 MR. BOLTON: David Bolton. Yes, Your Honor. Thank  
22 you very much.

23 THE COURT: Okay. So let's do that, and just notice a  
24 continuation -- or notice of conference for the 12th. And I  
25 think that's all we need to do on this one. Anything else on

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1 1146?

2 MR. BORRIELLO: That's everything for 1146 today.

3 The next one I'm covering --

4 THE COURT: Okay. Oh, hang on. I don't know if I  
5 need to do this. I'm going to say the magic word. So we're  
6 adjourned on 1146, and if you're here only for that, you're  
7 free to go. Thanks.

8 Okay. Go ahead.

9 MR. BORRIELLO: So the next adversary proceeding that  
10 will be covered is 23-1023. And that's Togut v. Colgate  
11 University, et al. And just to give an update for Your honor,  
12 we held our first settlement conference last Friday with  
13 counsel for Colgate. We asked that they provide us with a  
14 confidential position statement similar to what we've been  
15 doing in other cases.

16 And in connection with that, we'd like to adjourn this  
17 pre-trial conference out to July 12th, as well, to see if that  
18 process -- let that process play out. And if not, we would  
19 expect to be able to enter a scheduling order at that time.

20 THE COURT: Okay. Is anybody here for Colgate?

21 MS. TEMES: Yes, Your Honor. Sara Temes from Bond,  
22 Schoeneck King, on behalf of Colgate University.

23 That comports with our understanding as well.

24 THE COURT: Okay. That's fine. Let me just say  
25 something you didn't expect, which is that I always am mindful

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1 of conflicts and the appearance of conflicts. I have  
2 considered it and conclude I don't have them. But I love  
3 Colgate University, and my son went there, in fact, in the  
4 class of 2019. So I haven't told him about any possible ties,  
5 but there you go.

6 So now that's on the record. Nevertheless, there's a  
7 formal procedure where courts can ask parties to advise if they  
8 consent to an appearance issue. I'm not invoking that because  
9 I don't believe there is even an appearance. But to help  
10 ensure that's the case, I'm just telling you this fact. Okay?

11 MS. TEMES: Thank you, Your Honor.

12 THE COURT: So I will see you on July 12th, or I will  
13 see a beautiful stipulation that I sign off on before then.  
14 Okay?

15 So we're adjourned -- I think that's it, right, for  
16 1023?

17 MR. BORRIELLO: Correct, Your Honor. That's all for  
18 1023. And with that, my role in the pre-trial conference,  
19 status conference role discussion has come to an end, and I'm  
20 going to pass it to Ms. Nester. You may hear from me at the  
21 end with some general case updates, but --

22 THE COURT: Right.

23 MR. BORRIELLO: -- we'll get through all the  
24 proceedings and let people get off the phone before we do that.

25 THE COURT: Okay. Thanks. So we're adjourned on



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1 1023, and onto Ms. Nester. If we're going to stick in order,  
2 the next case is 23-1062 with the defendant being American  
3 Express.

4 MS. NESTER: That's correct, Your Honor. Ms. Nester,  
5 counsel for the Chapter 7 trustee.

6 On March 30th, the trustee filed a complaint against  
7 American Express Company seeking to avoid transfers totaling  
8 not less than 73,315 dollars as preferences. The summons was  
9 issued -- that's docket number 2 -- setting forth a May 3rd  
10 answer deadline. The affidavit of service for the summons and  
11 complaint was filed on April 6th; that's docket number 3.

12 Surprisingly, no answer was filed. So we plan to send  
13 a letter to the defendant seeking a response to the complaint  
14 within seven days, and reserving all rights, including the  
15 right to seek entry of default if no answer is provided.

16 THE COURT: Yeah. That sounds exactly right. I mean,  
17 sooner or later, a default motion is going to be met with -- is  
18 just going to prove to be almost for sure wasted effort. So  
19 just try to make sure they kick into gear. It sounds like  
20 they've just slipped up, most likely.

21 MS. NESTER: Certainly, Your Honor.

22 THE COURT: Okay. So should we put this down for July  
23 12th for a further conference?

24 MS. NESTER: Yes, Your Honor. And would you like us  
25 to file a notice of adjournment or a notice of hearing?

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1 THE COURT: Yes, please. Let me say, I'm sympathetic  
2 to the trustee with all the noticing you have to do. But all  
3 of these are individual cases, and their docket sheets need to  
4 make individual sense. So yes, please do that.

5 MS. NESTER: So the next matter is case number  
6 23-01066 against Nyeba Woart.

7 THE COURT: Okay. Oh, this may be unnecessary, but  
8 I'm going to keep saying it. I think we may get a thousand  
9 separate transcripts; I don't know. So that adjourns 23-1062.  
10 Oh, and I should memorialize it. Is anyone here today  
11 for Amex? I think not.

12 Okay. So with an institution of that size and  
13 sophistication, I'm sure they have some glitch and that they  
14 will be awakened by this outreach and will get this in order.

15 Okay. So go ahead. We're on to 23-1066?

16 MS. NESTER: Correct, Your Honor. On March 31st, the  
17 trustee filed a complaint against Nyeba Woart seeking to avoid  
18 a \$51,362.15 transfer as a preference. A summons was issued --  
19 that's docket number 2 -- setting an answer deadline of May  
20 3rd. An affidavit of service was filed on April 6th; that's  
21 docket number 4.

22 No answer was filed, and we've had no communications  
23 from the defendant. So the defendant is in default, and our  
24 plan would be to move forward to seek entry of a default.

25 THE COURT: Okay. Do you have any contact other than

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1 whatever service means you achieved for the defendant?

2 MS. NESTER: No, Your Honor.

3 THE COURT: Okay.

4 MS. NESTER: I should say --

5 THE COURT: Yeah.

6 MS. NESTER: -- not to my knowledge, Your Honor.

7 Perhaps there's something in my mailbox that arrived today that  
8 I've not seen.

9 THE COURT: Right. No, that's fine. Okay. I think  
10 that plan sounds right. So I don't know, but I'm going to  
11 guess this is an individual defendant, so maybe the opposite  
12 end of the spectrum of Amex, who we just heard about.

13 I just want to make sure we have service taken care  
14 of, which you've done, and just sort of see if -- if there is  
15 some informal way of finding the person and making sure they're  
16 aware, that's maybe worth it before you put together a default  
17 motion.

18 But formally, you're right, a default motion is the  
19 next step. So you can proceed. It's just if you have some  
20 sort of -- if you can find an email or some contact info to  
21 say, hello, individual person, you got served with a thing; you  
22 may not know what to do, here's what it is, please be in touch.  
23 That might save some time.

24 MS. NESTER: Okay.

25 THE COURT: You can proceed as you want. You can also

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1 file your motion and then see where we get.

2 MS. NESTER: Thank you, Your Honor. That would  
3 conclude that adversary proceeding --

4 THE COURT: Yes.

5 MS. NESTER: -- unless the Court had any further  
6 questions.

7 THE COURT: No, that's fine.

8 And the next case's 23-1069, right?

9 MS. NESTER: Correct, Your Honor. On March 31st, the  
10 trustee filed a complaint against William Rosenblatt, seeking  
11 to avoid a 110,000-dollar transfer as a preference. The  
12 summons was issued -- that's docket number 2 -- setting forth  
13 an answer deadline of May 3rd. Affidavit of service was filed  
14 on April 6th, docket number 4.

15 Again, no answer was filed, and we've received no  
16 communications from the defendant. So the defendant is in  
17 default, and we plan to proceed, similar to what we talked  
18 about in the previous adversary proceeding, by seeking an entry  
19 of default.

20 THE COURT: Okay. That sounds, again, right. Okay.

21 MS. NESTER: Unless the Court had any further --

22 THE COURT: No, I don't. I'm sorry. I'm looking like  
23 I'm thinking, which I am, but I don't have a very constructive  
24 thing to say, just that all of these cases make me nervous.  
25 There's always the possibility of needing to have an inquest

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1 and fix damages. There's a million, sort of, tricky issues  
2 that flow, so that it's way better if people can be induced to  
3 engage.

4 And I know you know that, and there's only so much you  
5 can do, and you're running a big slate of cases. But keep that  
6 in mind because, ultimately, I think resolutions are cleaner if  
7 we can cause people to engage.

8 MS. NESTER: Yes, Your Honor.

9 THE COURT: But okay, that's neither here nor there.  
10 What timing do you envision on next steps?

11 MS. NESTER: So we would be prepared to seek the  
12 clerk's entry of default relatively quickly. We can put  
13 together that affidavit, and then await entry on that.  
14 Assuming that turned around pretty quickly, we would then have  
15 the application to the Court seeking the default judgment in  
16 the amount of sum certain pretty soon after that. I hate to  
17 put actual dates on my team, but we would be able to move  
18 forward very quickly with these.

19 THE COURT: Okay. That's fine. I'll let you work it  
20 out. I know you're managing a lot.

21 Okay. So that adjourns -- that resolves today's  
22 discussion of the William Rosenblatt case. That's 23-1069.

23 And I think it's on to 23-1071, where defendant is  
24 46/47 Apartment Holdings.

25 MS. NESTER: Correct, Your Honor. This is an

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1 adversary proceeding where the complaint seeks to avoid  
2 transfer totaling not less than \$682,210.83 as preferences. A  
3 summons was issued; that's docket number 2. The answer  
4 deadline was May 4th. Affidavit of service was filed on April  
5 6; that's docket number 4.

6 No answer was filed. No communications from the  
7 defendant. So the defendant is in default, and we plan to move  
8 forward to seek the clerk's entry of default.

9 THE COURT: Okay. That's a repeat discussion of the  
10 prior several cases, and that's fine.

11 MS. NESTER: Yes, Your Honor. So unless the Court has  
12 any further questions --

13 THE COURT: No further questions. We're adjourned on  
14 1071, and we can move on to 23-1073.

15 MS. NESTER: Thank you, Your Honor. On April 3rd, the  
16 trustee filed a complaint against 161 West 4 Realty LLC,  
17 seeking to avoid a 116,000-dollar transfer as a preference. In  
18 this action the answer was filed on May 9th; that's at docket  
19 number 5.

20 So unless the Court would prefer a different approach,  
21 in situations like these, where we have a defendant who's filed  
22 an answer, we would propose to submit a proposed scheduling  
23 order on presentment, with seven days' notice, with a discovery  
24 schedule.

25 And our goal would be to keep as many of these actions

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1 as possible on the same schedule so that, while there are  
2 different cases with different defendants, they would be moving  
3 forward kind of lockstep with one another, and we could sync  
4 the appearances, the deadlines for fact discovery, expert  
5 discovery, and those sort of things.

6 THE COURT: Yeah, that's going to be my general  
7 preference as well, subject to making sure the rights of each  
8 individual defendants are protected.

9 Is anyone here for 161 West 4 Realty?

10 Okay. So that's fine. You can just -- do you have a  
11 contact?

12 MS. NESTER: We do. An answer was filed.

13 THE COURT: Oh, they answered. So yeah, whoever filed  
14 that answer, just notify them informally that you're going to  
15 be submitting a proposed scheduling order as follows. Send it  
16 to them, and hopefully, either with consent or nonengagement,  
17 then you could submit it for entry. Okay?

18 Today is the pre-trial conference. By not appearing,  
19 the defendant was -- well, by being given notice, the defendant  
20 had notice and an opportunity to be heard with regard to a case  
21 management schedule. I'm prepared to enter one. Just check  
22 with them and see if you can avoid disputes before submitting  
23 it. But otherwise, I'm prepared to enter it without further  
24 notice.

25 MS. NESTER: Thank you, Your Honor.

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1 THE COURT: Okay? Thanks. That's it for 1073.

2 On to case number 23-1074, where the defendant is 169  
3 West 22 Street, Inc.

4 MS. NESTER: Thank you, Your Honor. This complaint  
5 seeks to avoid a 150,000-dollar transfer as a preference. The  
6 summons was issued, docket number 2. Answer deadline was May  
7 4th. Affidavit of service was filed on April 6th; that's  
8 docket number 4.

9 No answer was filed. No communications from the  
10 defendant. So the defendant is in default, and we plan to  
11 proceed seeking an entry of default.

12 THE COURT: Okay. That's approved. And that, I  
13 think, cover -- oh, let me just make sure no one is here -- is  
14 anyone here today for 169 West 22 Street?

15 No one said yes. Okay. We're adjourned on that case.

16 On to 23-1075. Defendant is 333 East 46th Street  
17 Apartment Corp.

18 MS. NESTER: Thank you, Your Honor. On April 3rd, the  
19 trustee filed a complaint against defendant --

20 THE COURT: Oh, hang on a second. I'm getting some  
21 background noise. Put yourself on mute until you're ready to  
22 speak, if you would. Okay. So we're here -- I'm sorry.

23 Mr. Siegel, are you here on this case?

24 MR. SIEGEL: Yes, I am.

25 THE COURT: Okay. Great. Yeah, we're getting some



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1 bad feedback, which I'm going to guess is from your end. Nice  
2 to see. I'll hear from you in a second. If you would just  
3 re-mute yourself because of the sound problem.

4 And Ms. Nester, you can go ahead.

5 MS. NESTER: Thank you, Your Honor. This complaint  
6 seeks to avoid transfers totaling not less than \$23,660.64 as  
7 preferences. The answer was filed on May 3rd; it's docket  
8 number 5. Consistent with our discussion about previous cases,  
9 because the answer has been filed, we would propose to submit a  
10 proposed scheduling order with similar deadlines and  
11 appearances in this matter as well.

12 THE COURT: Okay. You said 23,600 and change?

13 MS. NESTER: Yes.

14 THE COURT: Okay.

15 MS. NESTER: That is if I'm reading the note  
16 correctly. Yes, Your Honor.

17 THE COURT: Okay.

18 MS. NESTER: I can confirm that.

19 THE COURT: Okay. So obviously, one hopes this  
20 resolves without burning a lot of money or legal time.

21 Mr. Siegel, does that work for you, just to get a  
22 simple discovery schedule in place and take it from there?  
23 Hopefully you can just negotiate in the meantime.

24 MR. SIEGEL: Yeah, that's fine. This is a co-op  
25 closing situation. I have to get the file from the managing

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1 agent. The closing was two years ago. But I think, in this  
2 case, it was a true escrow. It's tenant shareholder funds that  
3 can be traced through the whole process.

4 THE COURT: Okay. That sounds great. So let's go  
5 ahead and get that order in place. I will say, given the  
6 dollar amount at issue, be a little particularly cost conscious  
7 on this one. It's true of all of them. You have a shared  
8 interest in that. But let's try to cut through it, but  
9 otherwise we'll have a schedule in place.

10 MR. SIEGEL: Okay. Thank you, Judge.

11 THE COURT: All right. Thank you. And, Mr. Siegel,  
12 as you've been hearing all day, if this is the only reason  
13 you're here, you're welcome to go. We're going to keep moving  
14 on.

15 MR. SIEGEL: Thank you, Your Honor.

16 THE COURT: All right? Thank you. That's it for case  
17 23-1075.

18 And the next case is 23-1076. Banyan Tree Capital,  
19 LLC is the defendant.

20 MS. NESTER: Thank you, Your Honor. On April 3rd, the  
21 trustee filed a complaint against Banyan Tree Capital, LLC,  
22 seeking to avoid transfers totaling not less than 175,000  
23 dollars as preferences. A summons was issued -- that's docket  
24 number 2 -- and contained a May 4th answer deadline. The  
25 affidavit of service was filed on April 6th; that's docket

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1 number 4.

2 But no answer has been filed, and we received no  
3 communications from the defendants, so the defendant is in  
4 default. We plan to pursue the entry of default, consistent  
5 with our other such similarly-situated cases.

6 THE COURT: Okay. Is anyone here for Banyan Tree  
7 Capital today?

8 No one said yes. Okay. That's fine. Proceed that  
9 way.

10 MS. NESTER: Okay.

11 THE COURT: And we are adjourned on that case.

12 The next case up is 23-1077. The defendant is 145  
13 Henry Partners, LLC.

14 MS. NESTER: Thank you, Your Honor. This complaint  
15 seeks to avoid transfers totaling not less than 125,000 dollars  
16 as preferences. A summons was issued, docket number 2, with an  
17 answer deadline of May 4th. The affidavit of service was filed  
18 on April 6th; that's docket number 4.

19 No answer was filed, and the defendant's in default,  
20 so we would plan to proceed with the entry of default.

21 THE COURT: Okay. Is anyone here for 145 Henry  
22 Partners?

23 Hearing no takers, you can proceed on that basis.  
24 We're adjourned on 1077.

25 Onto 23-1079.

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1 MS. NESTER: Thank you, Your Honor. On April 3rd, the  
2 trustee filed a complaint against Dean C. Penna, seeking to  
3 avoid transfers totaling not less than 300,000 dollars as  
4 preferences. The summons, at docket number 2, had an answer  
5 deadline of May 4th, and an affidavit of service was filed on  
6 April 6th; that's docket number 4.

7 In late April, we were contacted by counsel for the  
8 defendant and agreed to extend the answer deadline thirty days.  
9 We've sent a draft stipulation, very similar to the other  
10 adversary proceedings, memorializing that agreement, on April  
11 30th, and have followed up multiple times since then but have  
12 not heard back.

13 So unless the Court preferred a different approach,  
14 the trustee would plan to seek entry of default if the  
15 defendant fails to file an answer by that extended deadline.  
16 And we would respectfully request that the pre-trial conference  
17 be adjourned until July 12.

18 THE COURT: I think that sounds right. It sounds like  
19 you're reaching out. Just make sure you keep ping them in  
20 the meantime.

21 MS. NESTER: Certainly, Your Honor. Will do.

22 THE COURT: Okay. That sounds right. Okay. Oh, and  
23 I'll just keep going. Is anyone here for defendant Dean C. --  
24 it's P-E-N-N-A, Penna?

25 MS. NESTER: Correct, Your Honor.

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1 THE COURT: Okay. No one says yes. We're adjourned  
2 on that case.

3 And onto 23-1080. The defendant is Barasky.

4 MS. NESTER: Thank you, Your Honor. On April 3rd, the  
5 trustee filed a complaint against Bruce Barasky, seeking to  
6 avoid a 210,000-dollar transfer as a preference.

7 Defendant filed a motion to withdraw the reference and  
8 dismiss the complaint. That's at docket numbers 5 and 6. The  
9 motion is now docketed on the district court docket. It was  
10 served, I believe, May 18th, and with a response that would be  
11 due on June 1st under Local District Court Rule 6.1(b).

12 THE COURT: Okay. Can and should I be doing anything  
13 on this at this point or just be informed?

14 MS. NESTER: Your Honor, if we could adjourn the pre-  
15 trial conference to July 12th, and if Your Honor was inclined  
16 to have us go forward with discovery before the decision was  
17 reached by the district court, we would certainly be happy to  
18 put a schedule in place.

19 THE COURT: Okay. Is anyone here for defendant  
20 Barasky?

21 Okay. Let's just adjourn. I think in the  
22 circumstances -- I don't know anything. I have no ability to  
23 assess the strength of the motion, so let's just adjourn the  
24 pre-trial conference to the 12th of July, and you'll tell me  
25 where things stand. And if you want to push to get discovery

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1 moving at that time, I'll listen to you.

2 MS. NESTER: Thank you, Your Honor. Unless you had  
3 any further questions, that's all we had on that matter.

4 THE COURT: Okay. I don't. And so the next case is  
5 23-1081. Defendant is Jelic, J-E-L-I-C.

6 MS. NESTER: Thank you, Your Honor. That complaint  
7 seeks to avoid transfers totaling not less than, I believe,  
8 \$24,181.89 as preferences. That's an amount I can confirm  
9 later. The summons was issued at docket number 2 with an  
10 answer deadline of May 4th. Affidavit of service was filed on  
11 April 6th; that's docket number 4.

12 No answer was filed, but yesterday we were contacted  
13 by counsel for the defendant seeking an adjournment. Unless  
14 the Court prefers otherwise, we would seek to execute a  
15 stipulation with a thirty-day extension and adjourn the matter  
16 to July 12th.

17 THE COURT: That's approved.

18 Is anyone here for defendant Jelic?

19 No. Okay. That's approved.

20 MS. NESTER: Thank you, Your Honor.

21 THE COURT: We're adjourned on that.

22 Then the next one is 23-1083.

23 MS. NESTER: Thank you. That's a complaint against  
24 Lula Curanovic and Djoka Curanovic -- and I do apologize for  
25 the mispronunciation -- that's seeking to avoid a 25,000-dollar

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1 transfer as a preference. Summons at docket number 2. It  
2 contained an answer deadline of May 4th. The affidavit of  
3 service was filed on April 6th. That's at docket number 4.

4 We received no answer by either defendant, and no  
5 communications from either defendant, so that both defendants  
6 are in default and we would plan to move forward with an entry  
7 of default.

8 THE COURT: Okay. That's fine.

9 MS. NESTER: Unless --

10 THE COURT: Sorry. We are adjourned on -- that's  
11 fine. I assume no one's here for the defendants Curanovic?

12 Okay. We're adjourned on that case.

13 Onto 23-1086. Defendant is Shamah, S-H-A-M-A-H.

14 MS. NESTER: Thank you, Your Honor. On April 5th, the  
15 trustee filed this complaint seeking to avoid transfers  
16 totaling not less than \$630,526.46 as preferences. The  
17 summons, at docket number 2, contained an answer deadline of  
18 May 4th. The affidavit of service was filed on April 6th at  
19 docket number 4.

20 No answer has been filed, and there have been no  
21 communications from the defendant. So the defendant is in  
22 default, and we would plan to seek entry of default.

23 THE COURT: That's fine. This is -- you may not know,  
24 and if you don't, that's fine. Why is this one for so much  
25 money? Do you know what the circumstances are?

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1 MS. NESTER: I don't, Your Honor. I apologize.

2 THE COURT: That's fine. Okay. So your planned  
3 course of action is fine.

4 MS. NESTER: Thank you, Your Honor.

5 THE COURT: We'll see where we go. It is a  
6 substantial amount of money. And down the road, if you're  
7 trying to ask me to enter a default judgment in a sum certain,  
8 I'll probably have some heartburn about the dollar amount. So  
9 this may be worth a little extra effort to find these folks.

10 MS. NESTER: Certainly, Your Honor.

11 THE COURT: Okay. We're adjourned on that case.

12 The next one is 23-1092, and the defendant is  
13 Alexander.

14 MS. NESTER: Thank you, Your Honor. The trustee filed  
15 its complaint against Ann H.L. Alexander, John A. Lumbard,  
16 Susan Lumbard, seeking to avoid transfers totaling not less  
17 than 114,500 dollars. The summons is at docket number 2. The  
18 affidavit of service was filed on April 13th; that's docket  
19 number 3.

20 Parties have agreed to extend the answer deadline to  
21 June 9th. That's recorded on docket number 6. Unless the  
22 Court has any questions, we'd respectfully request to adjourn  
23 the pre-trial conference until July 12th.

24 THE COURT: That's approved. Is any defendant present  
25 and wanting to be heard?



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1 MR. MANISCALCO: Good morning, Your Honor. Joseph  
2 Maniscalco, LaMonica Herbst & Maniscalco --

3 THE COURT: Yep.

4 MR. MANISCALCO: -- on behalf of the defendants. How  
5 are you, Your Honor? Good morning.

6 THE COURT: Good. Nice to see you.

7 MR. MANISCALCO: Nice to see you, Your Honor. We  
8 filed a notice of appearance. We've entered into a stipulation  
9 with counsel to extend our time to file an answer. I'll get  
10 into the case and then speak to counsel about the case. If  
11 there's a way to resolve it, we'll resolve it. Otherwise,  
12 we'll file an answer and we'll take it from there.

13 THE COURT: That sounds perfect. Glad to have you  
14 appearing in the case. And for now, the adjournment to the  
15 12th is approved. Okay. That works for you, Mr. Maniscalco,  
16 right?

17 MR. MANISCALCO: Yes, it does. Thank you very much,  
18 Your Honor.

19 THE COURT: Okay. Thank you. And we're adjourned on  
20 case 23-1092.

21 Let's see. We're making good progress. I think the  
22 next and final adversary proceeding on the calendar is number  
23 23-1094, which is against Bloomingdale's.

24 MS. NESTER: Correct, Your Honor. This is the last  
25 one that I will be covering today before my colleague Ron

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1 Howard takes over on that Rule 2004 matters.

2 This complaint was brought against Bloomingdale's Inc.  
3 and Pamela Kossoff, seeking to avoid various transfers. The  
4 summons was docketed at docket number 2, with a May 10th answer  
5 deadline. Affidavit of services were filed on April 13th;  
6 that's docket numbers 3 and 4.

7 We received no answer from Bloomingdale's, which is  
8 surprising, so we plan to, similar to what we discussed in  
9 connection with American Express, send a letter seeking a  
10 response to the complaint within seven days, but waiving their  
11 rights, including the right to seek entry of default, if an  
12 answer is not filed within that time.

13 THE COURT: That sounds correct. Do you have a  
14 contact for them?

15 MS. NESTER: I will check back at service, Your Honor.  
16 I'll see what we have. We will get it out to Rule 2004  
17 counsel. If there was any contacts we know, we'll send it out  
18 by email.

19 THE COURT: Okay. Great. So all of that's fine. Do  
20 you want a set a 7/12 control date on that one or --

21 MS. NESTER: That would be great, Your Honor. I also  
22 should mention that we have agreed to extend Ms. Kossoff's  
23 answer deadline to June 19th, and I believe that stipulation  
24 was submitted to chambers on May 17th. So we would also like  
25 to, if the Court would be amenable, resubmit that stipulation

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1 so that we can get that docketed and make that clear that --

2 THE COURT: Yeah, that would be helpful. Yeah. So  
3 that's just waiting approval, right?

4 MS. NESTER: I believe so, yes, Your Honor.

5 THE COURT: Okay. If you retransmit, that would be  
6 helpful. Evidently something went astray, either internally or  
7 in transit, but we will get on it. And you're always welcome  
8 to follow up and say what's going on with fill-in-the-blank. I  
9 think some people are scared to bug judges. I'd rather be  
10 bugged than not. Okay. But resubmit it.

11 MS. NESTER: Thank you, Your Honor. We'll do so.

12 So that is the last of my agenda this morning. Unless  
13 the Court has any other questions, I would turn this over,  
14 first to Mr. Howard to speak to the Rule 2004 matters, and then  
15 I believe Mr. Borriello will give a general status update for  
16 the case.

17 THE COURT: Okay. I don't have further questions.  
18 Thank you for marching me through all that, and take care.

19 MS. NESTER: Thank you. And to reiterate, if any  
20 party would like a copy of the chart that was submitted to  
21 chambers, certainly we would be happy to provide it.

22 THE COURT: Okay. Great.

23 Let's see. So Mr. Howard, nice to see you. And I  
24 will let you lead me through the various matters that you're  
25 going to update me on and raise issues about.

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1 MR. HOWARD: Thank you very much, Your Honor. Ron  
2 Howard, Togut, Segal & Segal, for the Chapter 7 trustee.

3 Your Honor, there are three Rule 2004 subpoena related  
4 matters that I'm just going to summarize and discuss in  
5 connection with the status conference scheduled for today, the  
6 first being that for the order entered compelling Imperial  
7 Business Solutions to comply with their subpoena and Rule 2004  
8 order, which was entered on April 17th.

9 The order was served, and attempts were made to  
10 contact Imperial Business Solutions from April 27th, via  
11 telephone, on three different telephone numbers, and via email.  
12 We received no response.

13 The lack of any response from Imperial Business  
14 Solutions is sort of typical with the way they've treated all  
15 attempts to get them to comply with their subpoena since the  
16 date that the subpoena was served.

17 At this point, Your Honor, we're sort of evaluating  
18 whether any further assistance from the Court is wise and  
19 warranted. And I think what would be best here, Your Honor, is  
20 if the conference could be adjourned to, I think, maybe the  
21 June 15th date, where we have other things scheduled, with  
22 further leave to allow the trustee to submit a letter to the  
23 Court requesting that the matter be taken off the calendar if  
24 the trustee would expect to pursue the matter any further.

25 THE COURT: Hang on a sec. Let me just -- my clerk is

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1 asking me a helpful smart thing that I can't hear. Just a  
2 second. I'm going to mute myself.

3 Yeah. She was just asking about the date. You want  
4 June 15th? Because we do have a --

5 MR. HOWARD: Yes.

6 THE COURT: Okay. That's fine.

7 MR. HOWARD: Yeah, I just want to keep these folks on  
8 a short leash, because if I feel --

9 THE COURT: That's totally fine. You had accustomed  
10 us to hearing July 12th, July 12th, July 12th, throughout the  
11 day. So we wanted to make sure indeed you met June 15th.  
12 That's fine.

13 MR. HOWARD: Thank you very much, you Honor. If you  
14 want to call the next item. I think the next item on the --

15 THE COURT: Oh, yeah. Well, I mean, they're all in  
16 the main case, so I think it can be a combined thing. Is this  
17 the Biz Advance matter?

18 MR. HOWARD: That's correct, Your Honor. So this is  
19 the status conference with respect to the order compelling Biz  
20 Advance Now to comply with their subpoena and Rule 2004 order,  
21 which was entered also on April 17th.

22 We had established communications with Biz Advance  
23 Now, and documents were received on May 4th. Counsel at that  
24 time indicated that it was reviewing to see whether there were  
25 any other responsive documents or emails to produce.

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1 I contacted counsel last Friday, and he wrote back  
2 this morning -- or actually yesterday, indicating that he would  
3 be submitting a declaration and written responses, as required  
4 under the 2004 order, sometime this morning. I don't think  
5 we've got it yet.

6 So again, I also request that this matter be adjourned  
7 to June 15th so we can make sure that Biz Advance Now complies  
8 fully with the Rule 2004 order and their subpoena. We don't  
9 want to, again, adjourn it too far out.

10 THE COURT: That's also fine. I didn't say this out  
11 loud, but thought it. Just make sure you file a notice of  
12 continuation of conference on whatever it is that we're --  
13 certainly on Biz Advance and Imperial. And if that's where we  
14 end up on Ace Funding too, that as well. But --

15 MR. HOWARD: That's where we're going, Your Honor.

16 THE COURT: Okay.

17 MR. HOWARD: And noted. Yes, Your Honor. And the  
18 third status conference regarding the 2004 order and orders to  
19 compel concerns Ace Funding. The order to compel Ace Funding  
20 to comply with their subpoena and Rule 2004 order was also  
21 entered on April 17th.

22 I managed to get in contact with them the following  
23 week, and they submitted documents on April 25th and April  
24 26th. I contacted them yesterday, reminding them to submit any  
25 additional documents, in response to the subpoena, that hadn't

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1 yet been submitted, as well as their written responses and  
2 their subpoena declaration, as required under the Rule 2004  
3 order.

4 We received their declaration but not their written  
5 responses, so we'd like to obtain those written responses  
6 before we consider closing this one out. So we'd also like to  
7 adjourn this one to June 15th with, again, leave for permitting  
8 the trustee to submit a letter to take that matter off the  
9 calendar if the trustee determines that no further assistance  
10 from the Court is required and subject to us filing a notice of  
11 a continuance.

12 THE COURT: Okay. That's approved too. I assume no  
13 one's here for any of the defendants who've just been  
14 discussed, Ace Funding, Biz Advance, or Imperial Business  
15 Solutions. Is that correct?

16 Hearing nothing, okay. So that's fine. So the bottom  
17 line, you're making efforts, you're engaged with two people,  
18 one is not engaging, and we're going to push them all to June  
19 15th.

20 MR. HOWARD: That's correct, Your Honor.

21 THE COURT: Okay. And we have just -- I think we also  
22 have a calendar notation, just generally, for a status  
23 conference in the main case. But it may be only for these  
24 three matters. Is there anything else you want to talk to me  
25 about?

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1 MR. HOWARD: Your Honor, that concludes my  
2 presentations to the Court today.

3 THE COURT: Okay. Let's see. Mr. Borriello has just  
4 turned his camera on, so maybe he wants to say something at the  
5 end, as he foreshadowed, I think.

6 Oh, you're still muted, though.

7 MR. BORRIELLO: Apologies, Your Honor. Good morning  
8 again. Just for the record, Jared Borriello, on behalf of the  
9 Chapter 7 trustee.

10 As I mentioned earlier, I was going to provide the  
11 Court with a general status update and then some housekeeping  
12 matters.

13 First, I'm happy to report that, since the last time  
14 we were before you, we were working tirelessly and have  
15 commenced nearly sixty adversary proceedings which seek to  
16 recover, in the aggregate, over thirty million dollars for the  
17 benefit of the estate and its creditors.

18 The estate has also -- sorry -- the trustee has also  
19 entered into a number of tolling agreements with parties,  
20 including most of Mr. Kossoff's immediate family members, that  
21 will facilitate settlement discussions with those parties and  
22 alleviate some of the pressure to file unnecessary proceedings  
23 where we think those discussions might be successful. And we  
24 extended the deadlines out until -- the tolling agreement goes  
25 to mid-September. So we built in some time for us to continue



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1 those discussions.

2 And additionally, the trustee anticipates filing  
3 additional adversary proceedings related to claims that are not  
4 time barred by the limitations deadline, which we anticipate  
5 will seek millions of dollars in additional recoveries. The  
6 trustee's working on those complaints and anticipates filing  
7 them in the coming months.

8 So that's the general status update with respect to  
9 adversary proceedings. Unless you have any questions about  
10 that, I'll move on to some housekeeping matters.

11 THE COURT: I don't. I will just say I'm following  
12 from afar, at a very broad level, because we get docketing  
13 notices, so we're aware of all the activity you're doing. And  
14 my compliments; you're clearly working hard.

15 MR. BORRIELLO: Thank you, Your Honor. So the next  
16 item is, we talked about the June 15th date on Your Honor's  
17 calendar. We noticed, when we were reviewing the calendar  
18 today, that there are a couple of matters scheduled for June  
19 7th, which we think --

20 THE COURT: Oh. Do you want to combine them?

21 MR. BORRIELLO: -- we could combine them to the 15th,  
22 and we'd file a notice of adjournment. And those relate to  
23 adversary proceedings 23-1063 and 64, which relate to Bank of  
24 America, and then 1067, which relates to Tremada, and 1084,  
25 which is Zweig.

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1 THE COURT: Okay. I see 1096 and then 1100 on the  
2 calendar as well. Is that --

3 MR. BORRIELLO: 1096. I may have missed some. If I  
4 did, we will clean them up and --

5 THE COURT: Yeah, at any rate, it does -- yeah, I'll  
6 just say basically I am fine combining as many of those as  
7 possible onto June 15th. I do want to avoid wasteful effort on  
8 your part. But make sure that the defendants can attend them.

9 MR. BORRIELLO: Okay.

10 THE COURT: All right? Or else pick another date.  
11 Like, I don't want to just back into an extension request.

12 And Ms. Chinoy has turned on her calendar (sic), which  
13 suggests she wants to speak to something. Is that so?

14 Oh, you're muted.

15 MS. CHINYOY: No, not specifically to that. I had just  
16 been -- I had turned it off brief -- I've had it on briefly for  
17 a reason just -- I'm happy to wait until that. We had had the  
18 status conference --

19 THE COURT: Okay.

20 MS. CHINYOY: -- on the calendar for that. And so I'm  
21 just still here but can wait until --

22 THE COURT: Okay. That's great. Yeah. If you want  
23 to be heard, we'll get through Mr. Borriello, and then I'll  
24 come over to you.

25 So yeah, go ahead, Mr. Borriello.

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1 MR. BORRIELLO: Understood. So we will reach out to  
2 the defendants who are on for the 7th, and subject to their  
3 confirmation that they can appear on the 15th, we will move  
4 those dates.

5 THE COURT: Yeah, that's fine. And if the 15th is bad  
6 for somebody, but you want to clear out the 7th for your own  
7 purposes, I don't mind. Just use your judgment. I just don't  
8 want to --

9 MR. BORRIELLO: Okay.

10 THE COURT: -- inconvenience people and create a  
11 problem.

12 MR. BORRIELLO: Understood. And then the last matter  
13 for the status update is just the condo sale, which we had --

14 THE COURT: Oh, yeah.

15 MR. BORRIELLO: -- at last the last hearing or the  
16 status conference. That has closed as of May 1. It yielded  
17 net sale proceeds of approximately 133,000 dollars for the  
18 estate. The trustee is also holding the 35,000-dollar deposit  
19 from the first buyer of the condo who defaulted on the purchase  
20 agreement.

21 And as we previewed for you at the last status  
22 conference, we anticipate that there'll be a dispute over that  
23 amount, and it'll have to be resolved before Your Honor in a  
24 contested proceeding. But that's not for today. I just wanted  
25 to flag it again. I know there are discussions ongoing, but

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1 that's just to keep it on your radar that that may come before,  
2 Your Honor, in the near future.

3 THE COURT: Okay.

4 MR. BORRIELLO: And that concludes my general status  
5 update. So if Ms. Chinoy has an issue she'd like to address,  
6 I'll yield the podium to her.

7 THE COURT: Great.

8 Yeah, go ahead, Ms. Chinoy.

9 MS. CHINYOY: No. Morgan Chinoy here on behalf of  
10 Continental Casualty Company.

11 There was no issues that I wanted to address  
12 specifically. We had simply had this status conference set on  
13 the calendar for today in the event that Continental's motion  
14 had not been resolved.

15 Since I realize that we have not yet submitted the  
16 proposed order that was requested, I wanted to still appear  
17 here today in case Your Honor had questions and also just to  
18 confirm that we've been working with the trustee's counsel to  
19 prepare a revised proposed order agreeable to both parties, and  
20 expect to have that submitted to Your Honor very shortly.

21 THE COURT: Okay. Got it. All right. Thanks for  
22 explaining that. And I don't have questions. I accept -- or I  
23 guess you just answered the one question I could possibly have,  
24 so I'll just await an order, and thank you for the update.

25 MS. CHINYOY: Great. Thanks.

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1 THE COURT: Okay. I think that covers everything we  
2 needed to do today, yes?

3 MR. BORRIELLO: Yes, Your Honor.

4 THE COURT: Okay. Let me thank everyone for their  
5 ongoing hard work and good work. And with that, I will see you  
6 all soon. And we are adjourned. Take care.

7 MS. NESTER: Thank you, Your Honor.

8 MR. BORRIELLO: Thank you, Your Honor.

9 MR. HOWARD: Thank you, Your Honor.

10 (Whereupon these proceedings were concluded at 11:51 AM)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sharona Shapiro". The signature is written in dark ink and is positioned above a horizontal line.

Sharona Shapiro (CET-492)

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Date: May 29, 2023

May 23, 2023

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